

Anticipated acquisition by Osmosis Buyer Limited of Firewall Holding S.à. r.l.

Decision on relevant merger situation and substantial lessening of competition

ME/6992/22

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SUMMARY

1. Pursuant to a Share Purchase Agreement dated 21 December 2021, Osmosis Buyer Limited (**Osmosis**), a controlled portfolio company of BDT Capital Partners LLC (**BDT**) and holding company which controls the entities that operate the Culligan group (**Culligan**), will acquire the whole of the issued share capital of Firewall Holding S.à. r.l. (**Firewall**), the parent company of Waterlogic Group Holdings Limited (**Waterlogic**). BDT and Firewall are together referred to as the '**Parties**', and for statements referring to the future, as the **Merged Entity**.
2. The Parties, through Culligan and Waterlogic, both supply drinking water dispensers – including, in particular, bottled water coolers (**BWC**), bottle free coolers (**BFC**) and multifunctional taps (**MFT**) – to non-residential ('out of home') (**OOH**) customers the UK. Both Parties also manufacture BFC supplied in the UK.
3. The Competition and Markets Authority (**CMA**) believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of MFT to OOH customers in the UK.
4. The CMA also considered the likelihood of the Merger resulting in horizontal unilateral effects in: (i) the supply to end-customers (the **commercialisation**) of BWC in the UK; (ii) the commercialisation of BFC in the UK; and (iii) the manufacture of BFC supplied in the UK. The CMA believes that the Merger does

not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in these markets.

The supply of MFT to OOH customers in the UK

5. Culligan (through its Zip brand) and Waterlogic (through its Billi brand) both supply MFT to OOH customers in the UK.
6. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC through horizontal unilateral effects in the supply of MFT to OOH customers in the UK.
7. The Merger will combine the largest supplier of MFT to OOH customers in the UK (Culligan) with another significant provider (Waterlogic). Post-Merger the Merged Entity will have a very high share in the supply of MFT to OOH customers ([60-70]% by installed base, which is more than twice the size of the next largest competitor), with a material increment brought about by the Merger. The Merger will lead to a reduction in the number of competitors in an already concentrated market.
8. Overall, evidence from internal documents, third party views and data on the outcome of competition for past customer opportunities consistently indicate that the Parties compete very closely with each other.
9. Post-Merger, there would remain only one strong competitor to the Merged Entity, Brita. Quooker is the only other large supplier of MFT but would pose only a limited constraint on the Merged Entity given its focus on residential ('at-home') (**AH**) customers. Britvic would also constrain the Merged Entity to a limited extent. Smaller competitors (including re-sellers and suppliers of MFT focused on AH customers) pose only a negligible, or no, constraint on the Parties, mainly because either they have a limited market presence in the supply of OOH customers, and/or they have a different product and service offering. Suppliers of MFT to AH customers are not an effective alternative for OOH customers, given the technical differences between the MFT supplied to these two types of customers, as well as the different routes to market and sale processes used to serve AH and OOH customers.
10. The CMA believes that the competitors remaining after the Merger would not sufficiently constrain the Merged Entity.
11. The CMA found that entry and/or expansion is not likely to be timely and sufficient to offset the effects of the substantial reduction of competition resulting from Merger in supply of MFT to OOH customers in the UK.
12. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of MFT to OOH customers in the UK.

The commercialisation of BWC in the UK

13. Culligan (through its Culligan, Edgar's, The Water Delivery Company (**TWDC**) and Cascade Water brands) and Waterlogic (through its Angel and Kingshill brands) both commercialise BWC in the UK.
14. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the commercialisation of BWC in the UK.
15. After the Merger, the Parties will have a combined share of supply (by installed basis) of [20-30%] with an increment of [5-10%]. While the Parties compete against each other, the Parties are not particularly close competitors. There are other competitors that compete at least as closely with the Parties in the commercialisation of BWC in the UK.
16. The CMA found that the Merged Entity will continue to face at least two strong competitors (Eden Springs and AquAid) and two moderate competitors (CoolerAid and BWT), that can provide a national service, as well as a large number of smaller competitors and regionally focussed competitors that pose at least a limited constraint, either on a national or local basis.
17. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the commercialisation of BWC in the UK.

The commercialisation of BFC in the UK

18. Culligan (through its Culligan, Edgar's, TWDC and Cascade Water brands) and Waterlogic (through its Waterlogic and Purezza brands) both commercialise BFC in the UK.
19. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the commercialisation of BFC in the UK.
20. The Merged Entity will have a material share of supply, however the increment brought about the Merger will be very small, the Parties are not particularly close competitors and there are a number of other suppliers that will continue to constrain the Merged Entity post-Merger, including Eden Springs, AquAid and Cooleraid, as well as other smaller competitors of broadly the same size as Culligan.
21. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the commercialisation of BFC in the UK.

The manufacture of BFC supplied in the UK

22. Culligan (through its Oasis and Blupura brands) and Waterlogic both manufacture BFC supplied in the UK. The Parties both sell BWC and BFC units to downstream suppliers who supply those units to end-customers (**commercialisation suppliers**).
23. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the manufacture of BFC supplied in the UK
24. The Parties' combined share of supply is likely to be low, with a very small increment arising from the Merger, and there are a number of other manufacturers that will constrain the Merged Entity post-Merger.
25. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the manufacture of BFC supplied in the UK.

Conclusion

26. As set out above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of MFT to OOH customers in the UK.
27. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 25 August 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

The acquirer's group

BDT

28. BDT is a merchant bank based in the United States of America which specialises in investments in family-owned and founder-led businesses.¹ BDT is the ultimate parent company of Osmosis, a holding company which controls various entities that operate Culligan.²

Osmosis

29. Osmosis is a holding company which controls various entities that operate Culligan.³ Culligan is an international provider of water treatment solutions (including drinking water dispensers). Internationally, Culligan is engaged in the business of developing, manufacturing and distributing water treatment products for homes, businesses and industrial facilities as well as portable and 'on-the-go' solutions.⁴

30. In the UK, Culligan supplies BWC, BFC and MFT to end customers under the following brands:⁵

(a) BWC and BFC: Culligan, Edgar's, TWDC and Cascade Water.

(b) MFT: Zip and Fohen. Zip is focussed on OOH customers and Fohen is focussed on AH customers.

31. Culligan had a worldwide turnover of £[<] in 2021, of which £[<] was generated in the UK.⁶

¹ Final Merger Notice submitted to the CMA on 21 June 2022 (FMN), paragraph 7.

² Of BDT's controlled portfolio companies, Osmosis (through Culligan) is the only one active in the area of water treatment solutions (FMN, paragraph 7). BDT's activities outside of Culligan are therefore not discussed further in this decision.

³ FMN, paragraphs 5 to 6.

⁴ FMN, paragraphs 5, 27 and 28.

⁵ FMN, paragraphs 30, 31 and 51.

⁶ FMN, paragraph 62. Geographically, Culligan's business focuses on the Americas: of the worldwide revenues of £[<] generated in 2021, revenues generated in North America and South America accounted for [<]% (c. £[<]), whereas [<]% of 2021 revenues derived from the UK (c. £[<]) (FMN, paragraph 33).

The Target - Firewall

32. Firewall is a holding company based in Luxembourg and is the parent company of Waterlogic.⁷ Waterlogic is an international provider of drinking water dispensers and is headquartered in the UK.⁸ Internationally, Waterlogic specialises in the design, manufacture, distribution and operation of drinking water purification and dispensing systems for offices, factories, hospitals, restaurants, hotels, schools, other workspaces, and public spaces, and related services. In the UK, Waterlogic supplies BWC, BFC and MFT to end customers under the following brands:⁹
- (a) BWC: Angel (formerly Angel Springs) and Kingshill.
 - (b) BFC: Waterlogic and Purezza.
 - (c) MFT: Billi.
33. Waterlogic had a worldwide turnover of £[<] in 2021, of which £[<] was generated in the UK.¹⁰

TRANSACTION

34. Pursuant to a Share Purchase Agreement dated 21 December 2021, Osmosis will acquire 100% of the shares in Firewall.¹¹
35. The Parties informed the CMA that the Merger has received approval from merger control authorities in Australia, Austria, Germany, New Zealand and the United States.¹²

⁷ FMN, paragraph 9. All of Firewall's worldwide turnover (including its UK turnover) in 2021 was generated through Waterlogic.

⁸ FMN, paragraph 9.

⁹ FMN, paragraphs 40 and 41.

¹⁰ FMN, paragraph 62 and Response to the Issues Letter submitted to the CMA by the Parties on 4 August 2022 (**Issues Letter Response**), paragraph 4.2. Geographically, Waterlogic focuses on the UK, Ireland and North America: [<]% of its (unaudited) 2021 global turnover (c. £[<]) was generated in UK, while [<]% (c. £[<]) was derived from North America (FMN, paragraph 46).

¹¹ Currently, the shares of Firewall are held by Castik Capital S.à. r.l., a European private equity firm headquartered in Luxemburg as well as certain Castik controlled entities and other minority shareholders (the Sellers). [<]. FMN, paragraph 10.

¹² The approvals in Australia and New Zealand are subject to undertakings submitted to the Australian Competition and Consumer Commission (ACCC) and New Zealand Commerce Commission to divest Waterlogic's Billi multifunctional tap business in Australia and New Zealand, respectively. In the United States, the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act has expired without the issuance of a second request. FMN, paragraphs 20 and 21.

PROCEDURE

36. The CMA's mergers intelligence function identified the Merger as warranting an investigation.¹³ The Merger was considered at a Case Review Meeting.¹⁴

JURISDICTION

37. The CMA believes that the Merger (as described in paragraph 34) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.¹⁵
38. Each of BDT and Firewall is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
39. As set out in Tables 1, 2 and 3 below, post-Merger, the Merged Entity will have an estimated share of more than 25%, with an increment resulting from the Merger, in each of (i) the supply of MFT to OOH customers in the UK (ii) the commercialisation of BWC in the UK and (iii) the commercialisation of BFC in the UK.
40. The CMA, therefore, believes that the share of supply test in section 23 of the Act is met.
41. As such, the CMA 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.
42. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 23 June 2022 and the statutory 40 working day deadline for a decision is therefore 18 August 2022.

COUNTERFACTUAL

43. The CMA assesses the prospects for competition with the merger against the competitive situation without the merger (ie the counterfactual).¹⁶ For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹⁷ In this case, there is no evidence supporting a different counterfactual, and the Parties and third

¹³ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2022, paragraphs 6.4 to 6.6.

¹⁴ See [CMA2revised](#), page 43 and paragraphs 9.29 to 9.39.

¹⁵ Section 33(1)(a) of the Act.

¹⁶ Merger Assessment Guidelines (**CMA129**), March 2021, paragraph 3.1.

¹⁷ CMA129, paragraph 3.2.

parties have not put forward arguments in this respect.¹⁸ Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

FRAME OF REFERENCE

44. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment. It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.¹⁹
45. In relation to the UK, the Parties mainly overlap in:²⁰
- (a) the manufacturing of BFC;
 - (b) the commercialisation of BFC;
 - (c) the commercialisation of BWC; and
 - (d) the manufacturing and commercialisation (the ‘supply’) of MFT.

Product scope

46. The CMA considered whether it is appropriate to assess the competitive impact of the Merger with reference to separate frames of reference for: (i) the supply of different types of water dispenser; (ii) different levels of the supply chain

¹⁸ FMN, paragraph 71. The Parties noted that, following the divestment of Waterlogic’s Billi MFT business in Australia pursuant to commitments made to the ACCC in order to obtain merger control clearance for the Merger in Australia (the **ACCC Divestment**), the Merged Entity will not retain Waterlogic’s manufacturing capabilities in MFT and indicated that as such, the pre-Merger overlap between the Parties activities in manufacturing of multifunctional taps is not relevant to the CMA’s assessment of the competitive impact of the Merger (FMN, paragraphs 21 and 183). The CMA notes that, as set out in the CMA’s Merger Assessment Guidelines, only events that would have happened in the absence of the merger under review – and not as consequence of it – can be incorporated into the counterfactual (CMA129, paragraph 3.4). The CMA therefore believes the prevailing conditions of competition to be the relevant conditions of competition, excluding the ACCC Divestment.

¹⁹ CMA129, paragraph 9.2.

²⁰ The Parties are also both active in the commercialisation of boilers (which are mains fed and deliver instant, and typically unfiltered, boiling drinking water) and water fountains (which provide drinking water – most commonly in offices and public spaces – and are mains fed, deliver chilled and sometimes filtered water, and can be hanging on the wall or freestanding) in the UK (FMN, paragraphs 77 to 78). The Parties submitted that these activities are peripheral to the Parties’ overall offering and estimated that their combined share of supply in the commercialisation of boilers would be [5-10]% by installed base and below [10-20]% by revenue, while their estimated combined share in the commercialisation of water fountains would be below [0-5]% (FMN, paragraphs 73, 77, 78 and 243, footnote 137, Tables 37 and 40). Evidence submitted by third parties also indicates that the Parties face a number of competitors in relation to the commercialisation of boilers in the UK. No third-party expressed competition concerns regarding to the unilateral horizontal effects of the Merger in the commercialisation of boilers and water fountains. For these reasons, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC in relation to the commercialisation of boilers and water fountains in the UK

(manufacturing and commercialisation, respectively); (iii) water dispensers supplied to different customer types (AH and OOH customers, respectively) (iv) different services offered by competitors active in the commercialisation of water dispensers (eg sale/rental, maintenance and servicing of water dispensers).

Type of water dispenser

47. Broadly, BWC, BFC and MFT can be described as follows:²¹

- (a) BWC provide mineral, spring or purified water that can be ambient, cold, or hot depending on the machine functionality. These products have a bottle attached to them, which supplies the water and need to be replaced once empty. These bottles can be freestanding or countertop units.
- (b) BFC require a connection to a plumbed water and an electrical system and electrics as the supply of water. A BFC can improve the quality of water through filtration and/or purification and can be ambient, cold, hot or sparkling, depending on the machine. BFC can be either freestanding or placed on a countertop.
- (c) MFT provide water from a tap connected to the customer's plumbed water system. MFT require an electrical connection. Unlike traditional taps, MFT have added functionality in being able to filter and purify water, as well as providing chilled, hot/ boiling water. Further, certain taps can further provide carbonated water. MFT require adequate space under the countertop, in order to house the equipment needed to supply the various functionalities.

Parties' submissions

48. The Parties submitted that, for the purposes of assessing the competitive impact of the Merger, the relevant frame of reference is the commercialisation of drinking water. In particular, the Parties noted that, from a demand-side perspective, customers who intend to purchase drinking water for offices or households can choose from a range of options, including bottled water, untreated tap water or treated tap water (eg by using under-the-sink appliances, point of entry devices, pitchers, water fountains), buy or rent BWC or BFC (with or without services), buy or

²¹ FMN, paragraph 74. While there is some variation in terminology used, the Parties' descriptions are consistent with industry descriptions, for example those used in Zenith's Water Dispense Market Report for West Europe (the **West Europe Zenith Report**) and for the UK (which is an extract of the West Europe Zenith Report) (the **UK Zenith Report**), the 2022 versions of which were submitted to the CMA by the Parties on 14 June 2022. The Parties also submitted a 2021 version of the West Europe Zenith Report.

use refrigerators with built-in water dispensing functions, or use vending machines.^{22, 23}

49. Without prejudice to this view, the Parties submitted that, a hypothetical narrower segment for the commercialisation of water dispensers is likely to include at least the supply of BWC, BFC and MFT, in particular because:
- (a) like other types of drinking water solutions meet the same customer demand;²⁴ and
 - (b) from a supply-side perspective, there are few to no obstacles to entry into the commercialisation of water dispensers or for existing suppliers to expand their offering from one drinking water alternative to another.²⁵
50. In particular, the Parties submitted that there is a high degree of substitutability between BWC and BFC, as they typically have the same functionality and it is easy for existing suppliers to expand their offering from one drinking water alternative to another.²⁶

CMA's assessment

51. From a demand-side perspective, the differences in product functionality and requirements indicate that there is limited substitutability between different types of water dispenser depending on the needs of the customer. These differences were reflected in the feedback the CMA received from third party respondents:
- (a) BWC and BFC can be free-standing or placed on a countertop, whereas MFT require undertop and countertop space;²⁷
 - (b) BFC and MFT are mains-fed (in that they require a connection to the customer's plumbed water system and an electrical connection) whereas BWC do not);^{28, 29} and

²² FMN, paragraphs 146 and 166–170. See also Issues Letter Response, paragraph 2.6.

²³ The Parties submitted that this is particularly true for commercial customers who represent the vast majority of the Parties' customers in the UK. FMN, paragraphs 167 to 169.

²⁴ The Parties further submitted that customers can easily substitute machines at little or no incremental cost, and that in the UK, the time needed for switching is also limited as contracts are typically seasonal and short-term. They noted that this is consistent with the findings of the OFT in its decision of 6 March 2012 in its merger investigation into the completed acquisition by PHS of Connect Water Systems (UK) Limited and related companies and Filterpure Limited (**PHS / Connect**) in which some customers indicated that switching costs for water coolers (including BWC and BFC) were low and the time needed for switching, at less than six weeks, was small. *PHS / Connect*, paragraph 27. FMN, paragraph 169(a).

²⁵ FMN, paragraph 169(b).

²⁶ Issues Letter Response, paragraphs 2.8 and 2.9.

²⁷ Note of call with a third party on 10 May 2022.

²⁸ Note of call with a third party on 10 May 2022.

²⁹ Note of call with a third party on 17 May 2022.

(c) MFT provide additional functionality that BWC and BFC do not (eg boiling and in some cases carbonated water).³⁰

52. This is consistent with the OFT's findings in *PHS / Connect* that, at least for some customers, BWC or BFC were not substitutable.³¹
53. From a supply-side perspective, the evidence received indicates that the conditions of competition in the supply of BWC, BFC and MFT are distinct.
54. Documents submitted by the Parties – including industry reports prepared by Zenith, who the Parties describe as the main industry data source for BWC and BFC and whose reports (as noted by the Parties) are frequently referenced in the Parties' internal documents³² – show that the Parties' and industry reporters monitor the competitive dynamics in the supply of each of BWC, BFC and MFT separately and that the competitors active (or, in for competitors supplying more than one type of water dispenser, the extent to which they are active) in each segment are different.^{33, 34, 35, 36, 37}
55. Other evidence received from the Parties and third parties also indicate that conditions of competition in the supply of each of BWC, BFC and MFT are distinct. In particular, share of supply estimates prepared by both the Parties³⁸ and the CMA³⁹ show that the competitor set in the supply of MFT is different from the competitor set in the commercialisation of BWC and BFC. In addition, the relative presence of competitors in the commercialisation of BWC and BFC differ.⁴⁰
56. For the reasons set out above, the CMA has assessed the competitive effects of the Merger in relation to different types of water dispenser separately.

³⁰ Note of call with a third party on 27 April 2022.

³¹ *PHS / Connect*, paragraphs 13 to 16. The OFT did not reach a conclusion as to the appropriate frame of reference.

³² FMN, footnote 91 and Issues Letter Response, paragraph 2.50 and footnote 39. The Parties noted however that, for MFT, Zenith's data is acknowledged in the industry to be problematic and incomplete (as Zenith itself acknowledges), reflecting primarily the fact that Zenith has only recently started seeking to track the MFT space (FMN, paragraph 175(c)). Zenith is referenced frequently in the Parties' internal documents with respect to BWC and BFC.

³³ Regarding the UK, a report prepared by consultants for BDT explains that [redacted] (BDT, Annex 10-006, April 2021, page 32). The report further discusses [redacted] (BDT, Annex 10-006, April 2021, page 42).

³⁴ An internal document prepared by Culligan in June 2020 [redacted] (Culligan, Annex 10-010, June 2022, page 3). [redacted].

³⁵ The 2022 UK Zenith Report.

³⁶ Waterlogic, Annex 11-067, 18 November 2021, slides 7 to 9

³⁷ See for instance Waterlogic, Annex 11-061, 3 August 2020.

³⁸ FMN, Tables 25, 26 and 29.

³⁹ See Tables 1 and 2 below.

⁴⁰ FMN, Tables 25, 26 and 29. The CMA also received evidence from third parties active in the commercialisation of BFC on their installed based, in 2021, of BFC units supplied to end-customers which showed that the level to which they are present differs as between BWC and BFC (Third party responses to CMA Competitor Questionnaire dated 23 June 2022, questions 14 and 19).

Supply chain level (BWC and BFC)

57. Manufacturers, including the Parties,⁴¹ sell BWC and BFC units to downstream commercialisation suppliers.⁴²
58. Commercialisation suppliers include:
- (a) 'traditional' water cooler companies (such as the Parties, Eden Springs, AquAid and Cooleraid) who rent or sell BWC and BFC to end-customers and offer associated maintenance services. Most of Culligan's⁴³ and Waterlogic's⁴⁴ supply of BWC and BFC to OOH customers are rentals. Similarly, most of Culligan's⁴⁵ and Waterlogic's⁴⁶ BWC and BFC units supplied to OOH customers (whether rented or sold) are supplied with an associated maintenance contract.⁴⁷
 - (b) suppliers with differing business models, such as coffee and vending machine companies (such as Liquidline), office supplies providers (such as Staples), merchants (such as Plumbing Trade Supplies) and e-commerce providers.⁴⁸

Parties' submissions

59. The Parties submitted that they consider that the supply chain for BWC and BFC consists of distinct activities for (i) the manufacturing and supply of BWC and BFC

⁴¹ Culligan also manufactures BWC supplied in the UK (Waterlogic commercialises but does not manufacture BWC supplied in the UK) (FMN, paragraphs 79 and 86).

⁴² Such sales may be intragroup (where the manufacturer and commercialisation supplier are vertically integrated) or to third party commercialisation suppliers. [%] and [%] of BWC and BFC units (respectively) commercialised by Culligan are own-manufactured. The [%] of BFC units and [%] of the BWC units commercialised by Waterlogic are own-manufactured (FMN, Tables 6 and 11).

⁴³ [%] of BWC and [%] of BFC (by volume) supplied by Culligan to OOH customers in the UK in 2021 were rentals. FMN, Table 9.

⁴⁴ [%] of BWC and [%] (by volume) of BFC supplied by Waterlogic to end (OOH) customers in the UK in 2021 were rentals. FMN, Table 12.

⁴⁵ [%] of BWC and [%] of BFC (by volume) supplied by Culligan to OOH customers in the UK (whether rentals or sales) in 2021 were supplied with an associated maintenance contract (FMN, paragraph 130(a)).

⁴⁶ [%] of BWC and [%] (by volume) of BFC rented by Waterlogic to end (OOH) customers in the UK in 2021 were supplied with an associated maintenance contract (a smaller proportion of sales also include an associated maintenance contract) (FMN, paragraph 130(b)).

⁴⁷ With respect to Culligan's rental contracts for BWC and BFC supplied to OOH customers (and AH customers, where applicable) in the UK: these are [%], typically have a [%] fee and a minimum contract length of [%] (for BWC) or circa [%] (for BFC) (albeit, in each case, with significant variance across different contracts; for BWC, customers typically order water bottle delivery from Culligan with a minimum delivery quantity of [%] bottles per delivery and are charged for maintenance and servicing / sanitisation separately; and, for BFC, maintenance and servicing, including sanitisation [%] a year, are typically included in the rental fee (FMN, paragraphs 81 and 290). Waterlogic's rental contracts for BWC and BFC (which are all supplied to OOH customers) in the UK are [%], include [%] and typically have a minimum contract length of [%] for BWC and [%] for BFC (FMN, paragraphs 88 and 292).

⁴⁸ FMN, paragraphs 238 and 260.

to third party suppliers of water dispensers and (ii) the commercialisation of BWC and BFC.⁴⁹

60. CMA's assessmentEvidence received from the Parties and third parties indicates that the set of competitors active in the manufacturing of BWC and BFC are largely different from the competitors active in the commercialisation of BWC and BFC.
- (a) The Parties submitted that most of the largest third parties⁵⁰ active in the commercialisation of BWC and BFC in the UK are not active in the manufacturing of BWC and BFC.⁵¹
 - (b) Conversely, the Parties submitted a list of their main competitors in the manufacturing of BWC and BFC. Of a total of 12 competitors identified as active in the manufacturing of BWC and 21 in BFC: (i) only three manufacturers of BWC ([REDACTED], [REDACTED], [REDACTED]) were identified as active at the commercialisation level in in the UK; and (ii) only five manufactures of BFC ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]) were identified as active at the commercialisation level in in the UK.⁵²
61. The CMA has also received evidence that, for customers sourcing BWC and BFC from suppliers active at the commercialisation level, sourcing directly from the manufacturer (where the manufacturer is not also active at the commercialisation level), is unlikely to be a credible alternative.
- (a) Manufactures' customers typically include commercialisation suppliers of BWC and BFC, whereas customers purchasing from a commercialisation supplier typically include end-customers and intermediaries procuring BWC and BFC on their behalf.⁵³
 - (b) All BWC commercialisation end-customers (ie customers that rent or purchase BWC from one or both of the Parties) that responded to the CMA's

⁴⁹ Explanatory note regarding the market structure for BWC and BFC submitted to the CMA by the Parties on 20 June 2022 (**Parties' BWC and BFC market structure explanatory note**), paragraph 1.2. The Parties noted that the Parties do not overlap in the manufacturing of BWC (as Culligan manufactures BWC whereas Waterlogic does not) (FMN, paragraph 154) and provided information on a hypothetical frame of reference for the manufacturing and supply of BWC and BFC to third party suppliers of water dispensers (FMN, paragraph 191 et seq).

⁵⁰ As identified by the Parties, with reference to the West Europe Zenith Report (FMN, Table 25 and Table 26). The Parties submitted that a wide range of other players are active in the commercialisation of BWC and BFC in the UK, with examples of players not named in the Zenith report including, for BWC, Thirstywork, Liquidline, Wenlock Springs, Fonthill, Glastonbury Springs, AA Coolers, Gorilla Watercoolers, Southdowns Water, Crown Coffee, Aqua Cool, Aqua Plus, Blue Mountain Water, Aqua Chill Watercoolers, Aquafresh and Love Water and, for BFC, Bibo, Thirstywork, Borg and Overstrom, Aquacool, 2468, Selecta, Liquidline, Freshground, Crown Coffee, AA Coolers and Filtered Water Coolers (FMN, paragraph 271).

⁵¹ FMN, Annex MN002, (BWC Providers (Table 4 DMN)).

⁵² FMN, Annex MN002, (BFC and BWC Manufacturers), and FMN, Table 44.

⁵³ For example, Waterlogic's largest BWC customers are commercial firms active in [REDACTED] (FMN, Annex 26(ii)). Similarly, at the commercialisation level, Culligan's largest BWC customers are commercial firms active in [REDACTED] (FMN, Annex 26(i) and (ii)).

questionnaire submitted that the ability to offer maintenance services (a typical feature of the Parties' commercialisation services, see paragraph 58) is an important factor that they consider when choosing their BWC or BFC supplier.⁵⁴

62. For the reasons set out above, the CMA has assessed the competitive effects of the Merger in relation to the manufacture and commercialisation of each of BWC and BFC separately.

Supply chain level (MFT)

63. Different to BWC and BFC:
- (a) as discussed in the competitive assessment below, the main suppliers of MFT are active in both the manufacture and supply to end customers (commercialisation) of MFT;⁵⁵ and
 - (b) MFT is more typically supplied through outright sales. [redacted] of the Parties' supply of MFT to OOH customers are sales⁵⁶ rather than rentals.⁵⁷
64. Suppliers may supply end-customers directly (ie where the supplier agrees a sale/rental contract directly with the end customer) and indirectly through, for example, architects, interior designers and contractors.⁵⁸ Suppliers may also supply rivals only active at the 'commercialisation' level – including coffee and vending machine companies such as Liquidline, Selecta and Express Vending and electrical wholesalers such as Electrical Deals Direct.⁵⁹

Parties' submissions

65. The Parties submitted that MFT are predominantly sold directly to consumers – who typically choose their preferred product by reference to a tap's aesthetics, forms and functionality – and that, as such, there is no meaningful distinction between the

⁵⁴ Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 8 and 15.

⁵⁵ The vast majority of MFT supplied by Culligan and Waterlogic to end-customers are own-manufactured ([redacted]% and [redacted]%, respectively) (FMN, Table 6 and 11).

⁵⁶ [redacted]% (by volume) of MFT supplied by Culligan and [redacted]% (by volume) of MFT supplied by Waterlogic to OOH customers in the UK in 2021 were sales (FMN, Tables 9 and 12). A material proportion ([redacted]% and [redacted]%, respectively) of Culligan's and Waterlogic's MFT units supplied to OOH customers (irrespective of whether sales or rentals) were supplied with an associated maintenance contract (FMN, paragraph 130).

⁵⁷ Waterlogic's rental contracts for MFT include [redacted] but otherwise do have typical terms, with every rental contract negotiated directly with the customer to suit their individual requirements (FMN, paragraph 292). Culligan's rental contracts for MFT (which are not available for AH customers) typically have a contract length of [redacted] and [redacted] (FMN, paragraph 290).

⁵⁸ Specifically, the Parties submitted, for OOH customers, their indirect supply of MFT is typically through building relationships with organisations who specify appliances for new buildings, for example architects, interior designers, contractors and consultants (FMN, paragraph 99).

⁵⁹ FMN, paragraphs 102 and 320. See also Parties' response to the CMA's Request for Information dated 7 July 2022 (**Parties Response to RFI 8**), questions 1, 2 and 5. In this Decision, the CMA refers to third parties active in the 'commercialisation' of MFT who may be supplied by the Parties as '**re-sellers**'.

manufacturing and commercialisation levels of the supply chain.⁶⁰ In particular, the Parties further told the CMA that, unlike BWC and BFC – where customers typically approach ‘water cooler companies’ without a specific manufacturer or model in mind– MFT customers primarily choose their preferred manufacturer or product and then choose the purchase channel through which it is most convenient and suitable to purchase (rarely rent) the MFT of their choice.⁶¹

CMA’s assessment

66. As discussed in the competitive assessment below, the main suppliers of MFT, including the Parties, are vertically integrated.
67. In addition, the Parties identified the majority of the main (in the view of the Parties) MFT suppliers in the UK as being active in the manufacture of MFT for self-supply (as well as supply to third party providers).⁶²
68. The CMA has therefore assessed the competitive effects of the Merger in relation to the manufacture and commercialisation of MFT together, because its findings would not differ materially depending on whether the manufacturing and commercialisation of MFT were considered separately or as part of the same product frame of reference. To the extent that the Parties face non-vertically integrated rivals in the supply of MFT to end-customers, the CMA has considered the constraint provided by these rivals (in particular, re-sellers) in the competitive assessment.

Type of end-customer

Parties’ submissions

69. The Parties submitted that there are good arguments to support a finding of a single frame of reference for water dispensers supplied to AH and OOH customers.⁶³ In particular, the Parties submitted that:
 - (a) the demand profile for drinking water solutions is not materially different in a commercial from a non-commercial context and, from a supply-side perspective, there is no significant difference between supplying commercial and non-commercial customers;⁶⁴

⁶⁰ FMN, paragraph 174(a) and (c).

⁶¹ FMN, paragraph 174.

⁶² Namely: Quooker, BRITA, Kettle, Abode, Grohe, Maestro, Stiebel, Marco. The Parties submitted that Franke and Grohe were not active in the manufacturing of MFT and could not confirm for InSinkerator. FMN, Annex MN002, (BWC Providers (Table 4 DMN)).

⁶³ FMN, paragraph 170.

⁶⁴ FMN, paragraph 170.

- (b) there are no material differences in the manufacturing process or technical characteristics of BWC and BFC units produced for use in commercial or residential premises;⁶⁵ and
- (c) with regard to MFT, while there are limited differences between MFT manufactured for AH or OOH environments, with the main difference being tank capacity,⁶⁶ suppliers typically offer a range of tank sizes to cater for different customer needs and it is a straight-forward process to increase the size of a tank for an MFT.⁶⁷

70. The Parties further submitted that MFT products are becoming increasingly commoditised, with similar product features (including MFT used by OOH and AH customers) and that it is easy for suppliers of MFT to AH customers to switch to supplying OOH customers.⁶⁸ In particular, the Parties noted that the main difference between the products concerns tank capacity, but that suppliers typically offer a range of tank sizes to address different customer needs and that it is a straightforward process to increase the size of tank for MFT and there are other means of increasing capacity.⁶⁹

CMA's assessment

BWC and BFC

71. The CMA notes that, in the UK, BWC and BFC are most commonly supplied to OOH customers. Shares of supply estimates submitted by the Parties and included in third party industry reports indicate that the commercialisation of BWC and BFC to OOH customers represents approximately [90-100]%⁷⁰ and [90-100]%⁷¹ of supply, respectively. Consistent with this, the vast majority of the Parties' BWC and BFC sales are to OOH customers.⁷²
72. The CMA is not aware of any competitors that offer BWC or BFC to AH customers only.

⁶⁵ FMN, paragraph 157.

⁶⁶ In that AH customers generally only require a tank that has the capacity to serve the needs of four to six individuals, while a commercial environment often requires a larger capacity, which would require a larger tank and/or addition of an upgraded element/booster. FMN, paragraph 74(c).

⁶⁷ FMN, paragraph 74(c).

⁶⁸ Issues Letter Response, paragraph 3.26 and 3.29. The ability and incentive of suppliers of MFT to AH customers to enter and expand into the supply of MFT to OOH customers is considered in more detail in the competition assessment.

⁶⁹ Issues Letter Response, footnote 128.

⁷⁰ The Parties estimate the total market size for the commercialisation of BWC in the UK (overall) in 2021 to be [X] and the commercialisation of BWC to OOH customers in the UK to be [X] (FMN, Tables 25 and 27).

⁷¹ The Parties estimate the total market size for the commercialisation of BFC in the UK (overall) in 2021 to be [X] and the commercialisation of BFC to OOH customers in the UK to be [X] (FMN, Tables 26 and 28).

⁷² Most of Culligan's sales of BWC and BFC are to OOH customers ([X]% and [X]%, respectively) (based on volumes supplied in the UK in 2021, FMN, Table 8). Waterlogic only supplies BWC and BFC to OOH customers (FMN, paragraph 88).

73. For this reason, the CMA considers that its findings would not differ materially depending on the frame of reference considered. The CMA has therefore assessed the competitive effects of the Merger in relation to the commercialisation of BWC and BFC without distinguishing between the type (AH or OOH) of customer served.

MFT

74. Considering MFT, from a demand side perspective, evidence from third parties indicates that, owing to the differences in the technical characteristics of MFT supplied to AH and OOH customers, there is limited substitutability between MFT supplied to AH and OOH customers, especially in relation to MFT supplied to large OOH customers.
- (a) Some competitors told the CMA that the unit and tank⁷³ in an OOH MFT are considerably larger than the one for the AH MFT, and hence would be too large to be used in a typical domestic kitchen.⁷⁴ One competitor noted that OOH MFT are also considerably more robust, and designed to withstand much higher usage than one designed for AH use.⁷⁵ It noted that an AH MFT system may be able to serve a smaller office, but in larger offices (that require a more robust product with higher through flow) such systems are 'prone to fail'.⁷⁶ Another competitor said that it installed its MFT with larger capacity 'in the workplace' and the more compact MFT at home.⁷⁷
- (b) Only one competitor told the CMA that there is no real distinguishing feature in the product offering for the AH and OOH customers.⁷⁸ This competitor noted, however, that the pricing is different as MFT to OOH customers are generally sold on monthly rental or payment plans.⁷⁹
- (c) The CMA received limited evidence that AH suppliers could readily increase tank size or deploy other means of increasing capacity to serve OOH customers. One competitor that it would not be easy for AH suppliers and OOH suppliers to expand into the other market respectively because of implications in terms of product development (different through-put required).⁸⁰

⁷³ The heating unit and tank required to provide boiling water in an MFT typically sits under a work surface or countertop, with the tap itself sitting on the work surface or sink.

⁷⁴ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 26.

⁷⁵ Note of call with a third party on 27 April 2022; Note of call with a third party on 10 May 2022.

⁷⁶ Note of call with a third party on 10 May 2022.

⁷⁷ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 30.

⁷⁸ Note of call with a third party on 10 June 2022.

⁷⁹ Third party response to CMA Competitor Questionnaire dated 27 July 2022.

⁸⁰ Note of call with a third party on 27 April 2022.

75. Evidence from third parties also indicates that the routes to market and sale processes vary considerably between the supply of MFT to AH and OOH customers.
- (a) Competitors explained that the main routes to market in OOH are through a tender process or bilateral negotiation directly with a company (with direct tenders being more typical for larger companies) or through an indirect tender process through architects, facilities management companies or distributors. Differently, the MFT for AH customers are sold to kitchen specialists, DIY centres, plumbers and, in some limited instances, direct to end customer. The products are generally specified by architects and/or kitchen designers.⁸¹
 - (b) Competitors also explained that, in relation to OOH customers, key considerations during a typical tender process will be product quality and suitability, ongoing service levels and pricing.⁸² In relation to AH customers, the MFT are not generally leased and sales do not generally include an ongoing service and maintenance contract.⁸³ MFT are supplied to AH customers through kitchen supply shops. The main parameters of competition are differentiated on temperature, ease of use, speed of delivery, price and safety.⁸⁴
76. The Parties' internal documents, also note the difference in routes to market for AH and OOH customers.
- (a) A report prepared by the third party consultant [REDACTED].⁸⁵ Another [REDACTED] report states that '[REDACTED]'.⁸⁶ [REDACTED] in Culligan's more recent strategy documents,⁸⁷ which [REDACTED]; and
 - (b) An internal document prepared by Waterlogic [REDACTED].⁸⁸
 - (c) This is consistent with commentary in the UK Zenith Report that the OOH MFT segment was found to be 'challenging' because 'the interest is driven mostly by builders and architects designing new or refurbished kitchens';⁸⁹
77. From a supply-side perspective, evidence received from the Parties and third parties, which is consistent with industry reports, indicates that conditions of

⁸¹ Note of call with a third party on 27 April 2022; Note of call with a third party on 17 May 2022; Note of call with a third party on 10 June 2022

⁸² Note of call with a third party on 27 April 2022; Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 21.

⁸³ Note of call with a third party on 10 June 2022. The CMA notes that this is consistent with Culligan's commercial practice of not renting MFT to AH customers (see paragraph 71)

⁸⁴ Note of call with a third party on 10 June 2022.

⁸⁵ BDT, CULBDT-0078, 23 September 2017, pages 13 and 21.

⁸⁶ BDT, CULBDT-0089, 17 October 2017, slide 36.

⁸⁷ For example, CULBDT-0592, 18 May 2021.

⁸⁸ BDT, CULBDT-0001, 1 May 2022, slide 33.

⁸⁹ 2022 UK Zenith Report, page 37.

competition in the supply of MFT to AH and OOH customers are distinct, with some suppliers being focussed on (or only supplying) OOH customers while others are focussed on the AH segment.^{90, 91, 92, 93, 94}

78. The Parties' internal documents also show [REDACTED].⁹⁵
79. For these reasons, the CMA has assessed the competitive effects of the Merger in relation to the supply of MFT to OOH customers.

Type of service

Parties' submissions

80. The Parties did not identify separate frames of reference for the commercialisation or supply of BWC and BFC on the one hand and related maintenance and other services on the other.⁹⁶ In relation to the supply of MFT, the Parties have also not distinguished a separate frame of reference to the supply of maintenance services to MFT. The Parties noted that around [REDACTED]% of Culligan's and [REDACTED]% of Waterlogic's MFT sold units are serviced.⁹⁷

CMA's assessment

BWC and BFC

81. The Parties typically provide these services together (see paragraph 58). In relation to the BWC, Culligan and Waterlogic generated only around £[REDACTED] and £[REDACTED], respectively from the supply of maintenance services to other BWC suppliers.⁹⁸ In relation to the BFC, Culligan and Waterlogic generated only around £[REDACTED] and £[REDACTED], respectively from the supply of maintenance services to other BFC suppliers.⁹⁹
82. Consistent with this, the Parties' internal documents indicate that [REDACTED]. The response of third parties to the CMA's merger investigation similarly indicated that

⁹⁰ FMN, paragraph 80.

⁹¹ Note of call with third party dated 27 April 2022; Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 31.

⁹² Note of call with a third party on 27 April 2022.

⁹³ Third party complaint to the Merger Intelligence Committee; Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 31; Note of call with a third party on 10 May 2022; Note of call with a third party on 17 May 2022; Note of call with a third party on 27 April 2022.

⁹⁴ 2022 UK Zenith Report, 37 and 40.

⁹⁵ See, for example, BDT, CULBDT-0805, 27 October 2021, pages 22 and 30.

⁹⁶ FMN, paragraphs 123 to 138.

⁹⁷ Issues Letter Response, paragraph 3.3(a).

⁹⁸ FMN, Table 15.

⁹⁹ FMN, Table 15.

commercialisation suppliers typically supply BWC and BFC units and associated maintenance and other services together.¹⁰⁰

MFT

83. Neither of the Parties typically outsources maintenance services to third party maintenance providers, except in exceptional cases and peak periods.¹⁰¹ The revenues generated from the supply of maintenance services to MFT supplied by third parties are not significant (Culligan and Waterlogic generated £[<] and £[<], respectively, from the supply of maintenance services to MFT supplied by third Parties in 2021).¹⁰² The CMA also notes that all main suppliers of MFT to OOH customers offer maintenance services.¹⁰³
84. For these reasons, the CMA has assessed the competitive effects of the Merger in relation to (i) the commercialisation of each of BWC and BFC and (ii) the supply of MFT to OOH customers, without reference to a separate a frame of reference for the supply of associated maintenance and other services.

Geographic scope

Parties' submissions

85. The Parties submitted that the frame of reference for the commercialisation of water dispensers and respective consumables/services should be at least national in scope.¹⁰⁴
86. A hypothetical upstream manufacturing market would, in the Parties' view, be global or should at least include the EU and the UK.¹⁰⁵
87. In the Issues Letter Response, the Parties explained in relation to the commercialisation of BWC that, while there is a local dimension of competition, the relevant geographic market is most appropriately defined on a nationwide basis, because the conditions of competition are homogenous across the UK, given: (i) there is a continuum of suppliers operating throughout the UK with overlapping footprints, with no clusters of demand or obvious local or regional boundaries; (ii) suppliers are not constrained to a particular region, as they can and do supply

¹⁰⁰ All BWC and BFC commercialisation suppliers and MFT suppliers that responded to the CMA's merger investigation, except one stated that they supply maintenance services. This may be through either through a rental agreement or through a servicing plan. Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 3.

¹⁰¹ FMN, 135 and 137

¹⁰² FMN, Table 15 and Table 16.

¹⁰³ See footnote 100.

¹⁰⁴ FMN, paragraph 171.

¹⁰⁵ The Parties noted in this respect that: there are several large manufacturers with manufacturing capabilities across the globe (many of which are located in Asia, especially China), and which sell to customers worldwide; online sales models further promote global distribution; and shipping costs do not play a material role in sourcing water dispensers from global distributors (FMN, paragraph 164).

customers even outside their areas of focus, either directly or through outsourcing agreements. The Parties also noted that, from a demand-side perspective, BWC customers often start with an online search for BWC suppliers, which, in the Parties' views, suggests that there is a national dimension to competition in this market.¹⁰⁶

CMA's assessment

Commercialisation of BWC and BFC and supply of MFT

88. The evidence received by the CMA indicates that the conditions of competition in the UK for the commercialisation of BWC and BFC, and the supply of MFT are distinct from other countries and that, for some customers, commercialisation of BWC and BFC, and supply of MFT may require a national presence.
89. Internal documents reviewed by the CMA indicate that the Parties [redacted].¹⁰⁷ Internal documents also show that [redacted].¹⁰⁸
90. Evidence from third parties also supports that competition for the commercialisation of BWC and BFC and the supply of MFT occurs at national level.¹⁰⁹
- (a) In relation to the commercialisation of BWC, one customer stated that national coverage 'is essential.'¹¹⁰ Another customer told the CMA that it 'required' that its suppliers of BWC had a national footprint¹¹¹. Another customer stated the Parties having a '[n]ational footprint is fairly important'¹¹² and another noted that 'For customers with a geographically diverse site portfolio' it would 'typically seek a national supplier'.
- (b) In relation to the commercialisation of BFC, a small number of customers noted that it was important to them that their BFC supplier had a national presence.¹¹³ The CMA did not receive evidence from competitors in BFC that indicated that these competitors focussed on particular regions or local areas in the UK, or that competitive conditions in the commercialisation of BFC materially varied across the UK.
- (c) In relation to MFT, evidence from third parties indicated that all the main suppliers of MFT (including the Parties) have a national coverage. One

¹⁰⁶ Issues Letter Response, paragraphs 2.10 to 2.12.

¹⁰⁷ For example, BDT, CULBDT-0773, 9 October 2021, page 7.

¹⁰⁸ For example, BDT, CULBDT-0080, 26 September 2017, slide 43.

¹⁰⁹ Note of call with a third party on 10 June 2022.

¹¹⁰ Third party response to CMA Customer Questionnaire dated 23 June 2022, question 8.

¹¹¹ Third party response to CMA Customer Questionnaire dated 23 June 2022, question 8.

¹¹² Third party response to CMA Customer Questionnaire dated 23 June 2022, question 8.

¹¹³ Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 21.

customer noted that ‘For customers with a geographically diverse site portfolio’ it would ‘typically seek a national supplier’.¹¹⁴

91. The CMA notes that in the commercialisation of BWC, one aspect of the service supplied by commercialisation suppliers is the regular delivery of replacement water bottles. One third party also told the CMA that the need for delivery of water bottles on a regular basis requires suppliers to have a local presence.¹¹⁵ Further, the Parties identified some companies that supply BWC at a regional level¹¹⁶ and the UK Zenith Report notes that there are some regional companies present in the commercialisation of BWC¹¹⁷. As such, the CMA has also considered whether there are regional or local dimensions of competition, and, if so, how to consider this in its assessment. Given the importance of a local presence (due to the need to make regular deliveries) and the existence of competitors active only in certain regions/local areas, the CMA considers that the competitor set and conditions of competition may differ between different regions. However, the CMA has not undertaken specific local or regional assessments. Instead, in its competitive assessment, the CMA has focussed on the extent to which the Parties face competitive constraints in the commercialisation of BWC at a national level (recognising that if there are sufficient constraints on the Merged Entity at the national level, sufficient constraints would also be expected to exist in each local area or region given the operation of this particular market) Given that the CMA found that given that there a large number of suppliers who can deliver on a national basis, the CMA has not needed to conclude on the boundaries of any precise local or regional frames of reference.

Manufacturing of BFC

92. The CMA has also considered the appropriate geographic scope for the manufacture of BFC. Evidence gathered by the CMA indicates that BFC supplied to customers in the UK are manufactured globally, for example, Culligan produces BFC for UK customers under the Blupura and Oasis brands in Poland, Mexico and Italy,¹¹⁸ and Waterlogic produces BFC for UK customers in China, the USA and Australia.¹¹⁹ Further, third parties have identified BFC manufactured in Italy, India and China and supplied to UK customers as a constraint on the Parties. Given this, the CMA has considered the alternatives available to the Parties for UK customers by worldwide manufacturers of BFC.

¹¹⁴ Third party response to CMA Customer Questionnaire dated 23 June 2022, question 8.

¹¹⁵ Note of call with a third party on 17 May 2022.

¹¹⁶ Parties’ response to RFI 8, question 3.

¹¹⁷ 2022 UK Zenith Report, page 13.

¹¹⁸ FMN, paragraph 79.

¹¹⁹ FMN, paragraph 86.

Conclusion on frame of reference

93. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the supply of MFT to OOH customers in the UK.
 - (b) the commercialisation of BWC in the UK;
 - (c) the commercialisation of BFC in the UK; and
 - (d) the manufacture of BFC supplied in the UK.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

94. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.¹²⁰ The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in:
- (a) the supply of MFT to OOH customers in the UK;
 - (b) the commercialisation of BWC in the UK;
 - (c) the commercialisation of BFC in the UK; and
 - (d) the manufacture of BFC supplied in the UK.

Horizontal unilateral effects in the supply of MFT to OOH customers in the UK

95. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC through horizontal unilateral effects in the supply of MFT to OOH customers in the UK. In its assessment, the CMA considered: (i) the Parties' and competitors' shares of supply; (ii) closeness of competition between the Parties; and (iii) the competitive constraint remaining post-Merger.

Shares of supply

Parties' submissions

¹²⁰ CMA129, paragraph 4.1.

96. The Parties submitted various estimated shares of supply related to the supply of MFT in the UK during the CMA's investigation.¹²¹
97. Based on estimates for 2021, the Parties submitted that their combined share of supply of MFT to OOH customers in the UK is low ([20-30]% by installed base¹²² and [10-20]% by annual volume of sales¹²³) with a small increment attributable to Waterlogic ([0-5]% by installed base and [0-5]% by annual volume of sales).¹²⁴
98. While in the FMN the Parties submitted shares based on installed base, the Parties later submitted that installed base is the incorrect metric for assessing shares of supply in MFT as they reflect the evolution of past competition rather than competition today, for which annual volume of sales are more appropriate.¹²⁵

CMA's assessment

99. The CMA estimated shares for the supply of MFT to OOH customers by installed base in the UK using data provided by the Parties and third parties.¹²⁶ The CMA's share of supply estimates are set out in Table 1.

¹²¹ Including, without prejudice to their view on the appropriate frame of reference for: the supply of MFT (overall) in the UK by installed base and by revenue (FMN, Tables 29 and 33); the supply of MFT to OOH customers in the UK by installed base and by revenue (FMN, Tables 30 and 34); and the supply of MFT to OOH customers in the UK by annual volume and value of sales (FMN, Annex MN0016, Table 1).

¹²² FMN, paragraph 222 and Table 30. As noted above, the Parties submitted that Zenith's data for MFT is acknowledged in the industry (including by Zenith) to be problematic and incomplete – reflecting primarily the fact that Zenith only recently started seeking to track the MFT space. Therefore, the shares of supply provided in the FMN were calculated on the basis of the Parties' best estimates of the overall market and individual competitors' size (based on their industry knowledge, available industry and other public data sources) by installed base (FMN, paragraph 175(c)). The Parties noted that they followed Zenith's approach of focusing on the MFT manufacturer, since this best reflects how MFT are purchased in the UK, and that installed base represents the way in which market shares are generally viewed in the supply of MFT, including by third party data sources such as Zenith (FMN, paragraph 175(c) and FMN, MN016, paragraph 1.2).

¹²³ The Parties submitted that, in view of the lack of third party data sources tracking sales by volume and value, the Parties' estimates by volume and value of annual sales were based on a bottom-up exercise undertaken by the Parties for the purpose of the CMA's merger investigation using their actual figures and best estimates of the overall market and individual competitors' size based on their industry knowledge and available public sources such as company accounts and competitors' public statements. FMN, Annex MN016, paragraph 1.2. The Parties further submitted that they are not aware of any reliable and recent third-party sources of data for producing volume share of supply estimates on the basis of annual new installations in the supply of MFT (FMN, Annex MN002, paragraphs 8.1, 8.3 and 8.4).

¹²⁴ FMN, paragraph 222 and Table 30 and FMN, Annex MN016, paragraph 1.1 and Table 1.

¹²⁵ Issues Letter Response, paragraphs 3.3, 3.4 and 3.11.

¹²⁶ To estimate the Parties' shares, the CMA used data provided the Parties on their installed base, in 2021, of MFT units that they manufactured which were supplied to OOH customers in the UK (whether directly or indirectly) (FMN, Table 30 and Issues Letter Response, footnote 114). The CMA also requested data from rivals on their installed base of MFT manufactured for OOH customers in the UK in 2021 (CMA's Competitor Questionnaire dated 23 June 2022, question 24(b)). In the Issues Letter Response, the Parties submitted that the question used to gather data from third parties was ambiguous in some respects. The CMA notes, however, that the CMA's share of supply estimates based on data received in response to this question is broadly consistent with the Parties' market share estimates in some internal documents.

Table 1: Shares of supply by volume (installed base) in the supply of MFT to OOH customers in the UK, 2021

<i>Supplier</i>	<i>Share (%)</i>
Culligan (mainly Zip)	[50-60]%
Waterlogic (Billi)	[10-20]%
Combined	[60-70]%
Brita (Vivreau)	[10-20]%
Quooker	[10-20]%
InSinkErator	[0-5]%
PureH2O	[0-5]%
Britvic (Aqua Libra)	[0-5]%
Hotspot Titanium	[0-5]%
Borg & Overström	[0-5]%
Cosmetal	[0-5]%
Total	100

Source: CMA analysis of Parties' actual data, Zenith data, and competitors' actual data

100. As set out in Table 1, the CMA estimates that the Parties have a very high combined share in the supply of MFT to OOH customers in the UK of [60-70]%. Culligan is currently the largest supplier with a [50-60]% share of supply, while Waterlogic is the fourth largest provider with a [10-20]% share of supply. Post-Merger, Brita would remain the second largest supplier of MFT to OOH customers, followed by Quooker, and a few smaller providers each with a share below [0-5]%.
101. The CMA notes the following limitations with the estimates in Table 1:
- (a) As noted by the Parties, installed base may not reflect current or future competitive conditions. However, the CMA considers that the shares of supply based on installed base provide a good proxy on the relative market position of the suppliers of MFT. Further, the CMA notes that the UK Zenith Report uses installed base when estimating the share of different suppliers.¹²⁷ Further, the other evidence received by the CMA is consistent with the CMA's share of supply estimates and indicates that Merged Entity's share of supply would be very high, irrespective of the metric used.¹²⁸
 - (b) The CMA has not included estimates for all rival suppliers of MFT to OOH customers as identified by the Parties,¹²⁹ but given the evidence outlined below, (in particular, third party evidence and internal documents) the CMA believes it

¹²⁷ 2022 UK Zenith Report, page 38.

¹²⁸ For example, an internal strategy document dated May 2021 [redacted], BDT, CULBDT-0592, 18 May 2021, slide 4. One competitor estimated that the Parties' would have a combined share of supply of 75% by revenue post-Merger.

¹²⁹ Issues Letter Response, paragraph 3.8. Explanatory note regarding an overview of key competitors in OOH MFT submitted to the CMA by the Parties on 5 July 2022 (**Parties' MFT Paper**). Examples of OOH MFT suppliers identified by the Parties but not identified by third parties/in the Parties' internal documents and not included in the shares of supply table include [redacted], [redacted], and [redacted].

is unlikely that these rivals would have a material share in the supply of MFT to OOH customers.

102. The Parties submitted that the CMA's estimates for particular third parties were implausible taking account of publicly available data and commentary. In particular, the Parties submitted that Quooker's and InSinkerator's estimated shares of supply appear to be understated. The CMA notes, however, that its estimates are based on actual data provided by Quooker and that, based on public sources, including the 2022 UK Zenith Report, InSinkerator has a very small presence in the supply of MFT to OOH customers. Further, using the Parties' assumptions for the sizes of their rivals, it would remain the case that the Merger combines two of the largest suppliers of MFT, which together would be more than twice the size of the next largest supplier.
103. Notwithstanding the above, the CMA believes that the CMA's estimates in Table 1 are broadly consistent with other sources of evidence and provide useful information on the competitive impact of the Merger and the CMA has placed some weight on its share of supply estimates.

Conclusion on shares of supply

104. Accordingly, the CMA considers that the Parties have a very high combined share of supply (as evidenced by the CMA's share of supply estimates and corroborated by internal documents). The reduction in the number of suppliers in a highly concentrated market may indicate *prima facie* competition concerns.¹³⁰

Closeness of competition

Parties' submissions

105. The Parties submitted that MFT are becoming increasingly commoditised – with most of the MFT products on the market offering the same functionalities (eg boiling and chilled water) – and that, as such, customers are primarily driven by price, reliability and capacity when it comes to choosing an MFT product.¹³¹ The Parties noted that whilst brands do try to differentiate themselves in terms of product features, most of this technology is developed at the manufacturing level, which is a global industry. The Parties submitted that, as a result, even when new innovative technology is introduced onto the market, a wide range of players are able to quickly upgrade a number of features to provide a similar offering.¹³²

CMA's assessment

¹³⁰ CMA129, paragraphs 4.10 and 4.14.

¹³¹ FMN, paragraph 313.

¹³² FMN, paragraph 314. See also, Issues Letter Response, paragraph 3.26.

106. The CMA examined the following evidence regarding the closeness of competition between the Parties: (i) the Parties' internal documents; (ii) third party views on closeness of competition between the Parties; (iii) Culligan's lost opportunities data and (iv) the Parties' product and service proposition.

Parties' internal documents

107. The Parties' internal documents [redacted].¹³³ [redacted].¹³⁴
108. These documents and others also indicate that Culligan monitors Waterlogic closely (and vice versa), including with respect to [redacted].¹³⁵ The CMA believes that this evidence indicates that the Parties see each other as close competitors in the supply of MFT to OOH customers in the UK.

Third party views

109. The CMA asked third parties whether they consider the Parties to be close competitors in the supply of MFT to OOH customers in the UK. Third party responses indicated that the Parties compete closely.¹³⁶ In particular, all competitors and almost all of MFT re-sellers that responded to the CMA's merger investigation, indicated that the Parties are close competitors in the supply of MFT to OOH customers in the UK.¹³⁷ A few competitors also indicated that the Merged Entity would have a very high share of supply by revenue or in a 'premium' segment.¹³⁸
110. Most of the Parties' customers identified the other party as an alternative to their supplier.¹³⁹ These customers indicated that Culligan competes closely with Waterlogic and that Waterlogic competes closely (or at least moderately) with Culligan. For instance, one customer submitted that Waterlogic is a '[n]ew supplier introduced as a main competitor to Zip'.¹⁴⁰ Further, one customer submitted that

¹³³ In the Issues Letter Response, the Parties submitted that, [redacted]. The Parties also noted that the statements in some internal documents [redacted]. The Parties stated that these documents [redacted] (Issues Letter Response, paragraph 3.50 to 3.53). The CMA notes that [redacted]. Furthermore, even if some documents [redacted], these documents considered together and interpreted in the context of all the other evidence, indicate that Culligan and Waterlogic are amongst the few competitors that pose a meaningful competitive constraint on each other in the supply of MFT in the UK.

¹³⁴ For example: a Culligan document titled '[redacted]' dated May 2021 [redacted]. It further states [redacted]; a presentation on Culligan's business in the UK and Ireland dated April 2021 discusses [redacted] (BDT, CULBDT-0538, 1 April 2021, slide 8).

¹³⁵ For example, a couple of Waterlogic internal documents [redacted] (Waterlogic, Annex 11-076, 7 February 2022, slide 2 and Waterlogic, Annex 11-071, 29 July 2021, slides 13, 14 and 16) [redacted]. Other documents [redacted], for example: Culligan, Annex 10-010, June 2020, pages 2 to 3; Culligan, Annex 10-003, undated, slide 2; BDT, CULBDT-0086, 17 October 2021, page 54; and Waterlogic, Annex 11-073, 9 November 2021, page 1.

¹³⁶ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, questions 7, 28 and 30.

¹³⁷ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 28.

¹³⁸ Note of call with a third party on 10 May 2022. Note of call with a third party on 27 April 2022.

¹³⁹ Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 23.

¹⁴⁰ Third party response to CMA's Customer Questionnaire dated 23 June 2022m question 23.

Culligan is ‘market leader’.¹⁴¹ Another Waterlogic customer told the CMA that it was aware of Billi, Zip and Brita MFT in the market.¹⁴²

Culligan’s lost opportunities data

111. The CMA has considered lost opportunity data supplied by Culligan to assess closeness between the Parties.¹⁴³
112. Culligan provided data on indirect opportunities. These are sales via distributors, for example, [redacted].¹⁴⁴ Culligan provided the CMA with analysis of the competitors to which Culligan’s Zip branded product lost indirect opportunities for the supply of MFT to OOH customers from 2019 to 2021.¹⁴⁵ [redacted].
113. Culligan’s analysis shows that [redacted].^{146, 147}
114. The CMA believes that this evidence indicates that Waterlogic is a very close competitor of Culligan in relation to the supply of MFT. Based on the lost opportunities data considered above, [redacted].

The Parties’ products and service proposition

115. Evidence received from the Parties also indicates that they have a similar business model (ie they are vertically integrated suppliers of MFT) and routes to market. The proportion of the Parties’ sales of MFT to OOH customers through direct and indirect channels are similar (both making approximately [redacted]% of their sales of MFT to OOH customers directly and [redacted]% indirectly) (see footnote 147. As compared to other competitors, such as Britvic and Quooker (see footnotes 167 and 174 below, which show that [redacted]), the Parties appear to have a relatively strong presence in the direct channel, indicating that they are more closely competing.
116. The CMA therefore believes that the Parties’ MFT offering is similar in terms of each of (a) the premium product and servicing provided and (b) business model and routes to market.

¹⁴¹ Third party response to CMA’s Customer Questionnaire dated 23 June 2022, question 23.

¹⁴² Note of call with a third party on 13 June 2022.

¹⁴³ In relation to Waterlogic, formal tenders make up less than [redacted]% of Waterlogic’s MFT contracts (FMN, paragraph 252). Given the lack of processes for which Waterlogic competes, the CMA has not considered win/loss evidence from Waterlogic in relation to the constraint that the Parties place on one another.

¹⁴⁴ Specifically, the Parties submitted, for OOH customers, their indirect supply of MFT is typically through [redacted] (FMN, paragraph 99).

¹⁴⁵ FMN, Table 42 and Table 43.

¹⁴⁶ Although the CMA notes that [redacted] may underestimate the actual diversion between Culligan and its competitors, including Culligan’s diversion to Waterlogic.

¹⁴⁷ The Parties submitted that, as these data relate to indirect sales made via distributors, where MFT are more typically sold directly, it is likely to overstate losses to [redacted] (see Issues Letter Response, paragraph 3.47 and 3.48). The CMA notes, however, that [redacted] of Culligan’s Zip sales ([redacted]%) and Waterlogic’s Billi sales ([redacted]%) in the UK are indirect sales (FMN, paragraphs 100 and 101).

Conclusion on closeness of competition

117. On the basis of the evidence above, the CMA believes that the Parties are very close competitors for the supply of MFT to OOH customers in the UK.

Competitive constraint remaining post-Merger

118. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA considered whether there are alternative suppliers that would provide a competitive constraint on the Merged Entity.

Parties' submissions

119. The Parties submitted that they face competition from several strong and credible competitors including Quooker, Brita, Franke, Aqua Libra (Britvic), Heatrae Sadia, Grohe, InSinkerator, Marco, Hyco, Pure H2O, Hotspot Titanium and Qettle, amongst others.¹⁴⁸ The Parties also noted that an increasing number of existing competitors, as well as new ones (including in adjacent industries such as refrigerators, 'traditional' taps, and beverage companies), are growing their reach and launching new MFT. The Parties submitted that it is technically and operationally straightforward for those companies in adjacent industries to add MFT to their product lines.^{149,150}
120. The Parties also submitted that a number of third party providers who re-sell the Parties' MFT are a significant and expanding competitive constraint, providing a few examples of contracts lost to re-sellers such as [redacted] and [redacted].¹⁵¹ The Parties also submitted that the re-sellers of the Parties' MFT are [redacted] and noted that third party providers can, and do, advertise and supply multiple brands or products sourced from various manufacturers to supply to end customers.¹⁵²
121. Finally, the Parties submitted that third parties operating in adjacent markets (including MFT supplier for AH customers) have entered and/or expanded their presence in the supply of MFT to OOH customers, offering high quality taps and leading in terms of product innovation.¹⁵³

CMA's assessment

Alternative suppliers of MFT to OOH

¹⁴⁸ FMN, paragraph 217. Parties' MFT Paper, paragraph 1.4(a).

¹⁴⁹ Parties' MFT Paper, paragraph 1.5(e).

¹⁵⁰ In addition to the evidence presented below, the Parties also submitted evidence ([redacted]) analysing MFT brand searches on Google. Given that this data does not distinguish between searches for AH and OOH MFT the CMA has not put weight on this analysis.

¹⁵¹ Issues Letter Response, paragraph 3.46.

¹⁵² Parties Response to RFI 8, question 4.

¹⁵³ Issues Letter Response, paragraphs 3.15 and 3.63.

- *Brita*

122. Brita is a vertically integrated supplier of MFT and is active in both the manufacture and supply to end-customers of MFT.¹⁵⁴ The CMA estimates that Brita is the second largest supplier of MFT to OOH customer in the UK with [10-20]% share of supply (see Table 1).
123. The Parties' internal documents (including documents prepared on behalf of the Parties) show that [REDACTED].¹⁵⁵
124. Brita is listed in the UK Zenith Report as one of the three main suppliers of MFT in the UK with a focus on OOH customers, alongside the Parties.¹⁵⁶
125. Some of the Parties' competitors and some re-sellers mentioned Brita as a strong or moderate competitor.¹⁵⁷ As described in paragraph 113, Culligan's lost opportunities data shows that [REDACTED].
126. Based on the available evidence, the CMA believes that Brita poses a strong constraint on the Parties in the supply of MFT to OOH customers in the UK.

- *Quooker*

127. Quooker is a vertically integrated supplier of MFT and is active in both the manufacture and supply to end-customers of MFT.¹⁵⁸ The CMA's share of supply estimates indicate that Quooker's share in the supply of MFT to OOH customers in the UK is [10-20]% (see Table 1).
128. Whilst Quooker supplies MFT to OOH customers, its focus is the supply of MFT to AH customers. The UK Zenith Report states that 90% of Quooker's sales are to AH customers.¹⁵⁹ [REDACTED].¹⁶⁰
129. The Parties' internal documents, including recent strategy documents, [REDACTED].¹⁶¹ [REDACTED].¹⁶²
130. A few competitors and one re-seller responding to the CMA identified Quooker as a competitor, although these responses recognised that Quooker's strengths are in the supply of MFT to AH customers.¹⁶³ One of them noted that 'the main MFT

¹⁵⁴ FMN, MN002, page 24. [REDACTED].

¹⁵⁵ For example, BDT, Annex 10-006, April 2021, slide 91 and BDT, CULBDT-0078, 23 September 2017, slide 10.

¹⁵⁶ 2022 UK Zenith Report, page 40.

¹⁵⁷ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 28.

¹⁵⁸ FMN, MN002, page 24. [REDACTED].

¹⁵⁹ 2022 UK Zenith Report, page 37.

¹⁶⁰ [REDACTED].

¹⁶¹ For example, CULBDT-0592, 18 May 2021 and BDT, CULBDT-0538, 1 April 2021.

¹⁶² BDT, CULBDT-0022, 20 October 2021, slide 4; and BDT, CULBDT-0050, 20 October 2021, slide 8.

¹⁶³ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 27.

players in the UK are Quooker in the residential market and Culligan and Waterlogic in the commercial market'.¹⁶⁴ One customer has identified Quooker as a moderate alternative to the Parties, noting that it is strong in domestic sales.¹⁶⁵

131. Culligan's lost opportunities data shows that [redacted].^{166, 167}
132. In terms of further expansion by Quooker in the supply of MFT to OOH customers, [redacted].¹⁶⁸
133. Based on the available evidence, the CMA believes that Quooker poses a limited constraint on the Parties in the supply of MFT to OOH customers in the UK in particular, due to its focus on AH customers.
- *Britvic (Aqua Libra)*
134. The CMA estimates that Britvic has [0-5]% share of supply of MFT to OOH customers in the UK (see Table 1).¹⁶⁹
135. [redacted] in some of the Parties' internal documents (see paragraphs 54 and 107). The UK Zenith Report suggests that Britvic's acquisition of Aqua Libra will enable Britvic to accelerate the development of solutions 'beyond the bottle'.¹⁷⁰
136. Few of the Parties' competitors contacted by the CMA mentioned Britvic as a competitor.¹⁷¹ None of the re-sellers identified Britvic as a competitor and only one customer has identified Britvic as a moderate alternative to the Parties.¹⁷²
137. Culligan's lost opportunities data also show that [redacted].^{173, 174}
138. Based on the available evidence, the CMA believes that Britvic poses a limited constraint on the Parties in the supply of MFT to OOH customers in the UK.
- *Other suppliers*
139. Based on the available evidence, the CMA believes that PureH2O, InSinkerator, Haetrae, Hotspot Titanium, Cosmetal and Marco pose only a negligible, or no,

¹⁶⁴ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 30.

¹⁶⁵ Third party responses to CMA's Customer Questionnaire dated 23 June 2022, question 23 and/or 24.

¹⁶⁶ FMN, Table 42 and Table 43.

¹⁶⁷ [redacted]. A Culligan internal document [redacted] (see [redacted]). [redacted].

¹⁶⁸ [redacted].

¹⁶⁹ With respect to vertical integration, Britvic [redacted].

¹⁷⁰ 2022 UK Zenith Report, page 27.

¹⁷¹ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 27.

¹⁷² Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 27 and Third party responses to CMA's Customer Questionnaire dated 23 June 2022, question 23 and/or 24.

¹⁷³ FMN, Table 42 and Table 43. [redacted].

¹⁷⁴ [redacted].

competitive constraint on the Parties in the supply of MFT to OOH customers in the UK. Specifically:

- (a) shares of supply, the UK Zenith Report and [REDACTED] show that these suppliers have a small presence in the supply of MFT to OOH customers in the UK.
- (b) the Parties' internal documents received by the CMA do not indicate that these competitors exert a competitive constraint on the Parties in the supply of MFT in OOH customers.¹⁷⁵ [REDACTED].
- (c) third party views do not indicate that these competitors exert a strong (or even moderate) competitive constraint on the Parties in the supply of MFT to OOH customers in the UK. No customers, competitors or re-sellers that responded to the CMA's merger investigation identified these competitors as strong or moderate competitors to the Parties.^{176, 177}
- (d) Culligan's lost opportunities data also show that [REDACTED].^{178, 179}

140. The Parties submitted that they also compete with the re-sellers of the Parties' MFT. Based on the available evidence, the CMA believes that re-sellers of MFT are not a material competitive constraint to the Parties:

- (a) First, re-sellers are not active in the manufacturing of MFT, they only distribute the Parties' MFT to end-customers under the Parties' brands.
- (b) Second, whilst most of the Parties' customers purchase MFT from the Parties, almost all the re-sellers who responded to the CMA's market testing rent MFT to their end-customers.¹⁸⁰ As such, re-sellers appear to be targeting customers with different needs compared to customers served by the Parties.
- (c) Third, evidence from third parties, internal documents and desktop research does not indicate that re-sellers compete or impose a meaningful competitive constraint on the Parties in the supply of MFT to OOH customers:
 - (i) some re-sellers who responded to the CMA's questionnaire indicated that they do not actively market their MFT offering;

¹⁷⁵ See, for example, CULBDT-0592, 18 May 2021, slides 2 to 5.

¹⁷⁶ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 27 and Third party responses to CMA's Customer Questionnaire dated 23 June 2022, question 23 and/or 24.

¹⁷⁷ The CMA notes that for Heatrae Sadia a few customers that responded to the CMA's merger investigation indicated Haetrae as a close (or at least moderate) alternative to the Parties. However, one customer added that Haetrae has an 'added Strong brand equity in the commercial heating market' (ie boilers) rather than MFT. (Third party responses to CMA's Customer Questionnaire dated 23 June 2022, question 23 and/or 24).

¹⁷⁸ FMN, Table 42 and Table 43.

¹⁷⁹ [REDACTED].

¹⁸⁰ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 27.

(ii) The CMA has not received any documents discussing re-sellers as a credible competitor in the supply of MFT to OOH customers. [REDACTED]; and

(iii) desk research on many of these re-sellers indicates that these re-sellers focus on different business needs (for example, coffee or vending solutions) and the MFT offer is not core to their business.

(d) Fourth, the evidence provided by the Parties on occasions in which they have lost sales to their own re-sellers suggests that such losses are minimal. Culligan provided a limited number of examples [REDACTED]. Waterlogic also provided a limited number of examples, [REDACTED]. Furthermore, Culligan's loss opportunities data indicates that [REDACTED].¹⁸¹

(e) Finally, and notwithstanding the above, even if re-sellers do compete with the Parties, the constraint that re-sellers are able to place on the Parties appears to be very limited, because re-sellers sell only a low volume of the Parties' MFT.

141. The CMA notes that the Parties identified a few other suppliers who were potential new entrants or had the potential to expand into the supply of MFT in the UK.¹⁸² As such, the CMA has also considered the evidence relating to the possible constraint placed on the Parties by these suppliers. The evidence available to the CMA also does not support that the other sources of entry and expansion identified by the Parties (eg Samsung and Aquatap) are likely to timely and sufficiently constrain the Merged Entity (eg entry and expansion by these companies is not considered a threat in the Parties' internal documents available to the CMA¹⁸³ and no evidence was received by the CMA indicating that the Parties are likely to lose MFT sales in the OOH space to these suppliers in the UK).

Conclusion on the competitive constraint remaining post-Merger

142. For the reasons set out above, the CMA believes that post-Merger, the Merged Entity will mainly be constrained by Brita, an established supplier of MFT to OOH customers in the UK. Quooker, given its focus on AH customers, poses a more limited constraint. Britvic is a small supplier of MFT to OOH customer and would, at most, constrain the Merged entity to a limited extent. Other small MFT suppliers, re-sellers, and potential entrants would not constrain the Merged Entity to any meaningful extent. On balance, the CMA does not believe that the competitive constraints provided by other MFT suppliers, in isolation and considered together

¹⁸¹ Parties Response to RFI 8, Annex 5.1.

¹⁸² Including by AquaTap and Samsung (Issues Letter Response, paragraph 3.63).

¹⁸³ Including, for example, a recent strategy document dated May 2021 titled '[REDACTED]' (CULBDT-0592, 18 May 2021) and in documents identified by the Parties as calling out a range of competitors in supply of MFT (Issues Letter Response, paragraph 3.54).

are sufficient to offset the loss of competition between Parties resulting from the Merger.

Conclusion on horizontal unilateral effects in the supply of MFT to OOH customers in the UK

143. The CMA believes that the Merged Entity will have a very strong market position post-Merger and that the Parties compete very closely in the supply of MFT to OOH customers in the UK. The CMA also believes that the Merged Entity will face only a limited number of competitive constraints post-Merger.
144. The Merger will combine the largest supplier of MFT to OOH customers in the UK (Culligan) with another significant provider (Waterlogic). Post-Merger the Merged Entity will have a very high share in the supply of MFT to OOH customers (60-70% by installed base, which is more than twice the size of the next largest competitor), with a material increment brought about by the Merger. The Merger will lead to a reduction in the number of competitors in an already concentrated market.
145. Overall, evidence from internal documents, third party views and data on the outcome of competition for past customer opportunities consistently indicate that the Parties compete very closely with each other.
146. Post-Merger, there would remain only one strong competitor to the Merged Entity, Brita. Quooker is the only other large supplier of MFT but would pose only a limited constraint on the Merged Entity given its focus on residential or at-home (AH) customers. Britvic would also constrain the Merged Entity to a limited extent. Smaller competitors (including re-sellers and suppliers of MFT focused on AH customers) pose only a negligible, or no, constraint on the Parties, mainly because either they have a limited market presence in the supply of OOH customers, and/or they have a different product and service offering. Suppliers of MFT to AH customers are not an effective alternative for OOH customers, given the technical differences between the MFT supplied to these two types of customers, as well as the different routes to market and sale processes used to serve AH and OOH customers.
147. The CMA believes that the competitors remaining after the Merger would not sufficiently constrain the Merged Entity.
148. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of MFT to OOH customers in the UK.
149. For the reasons above, the CMA accordingly believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of MFT to OOH customers in the UK.

Barriers to entry and expansion in the supply of MFT

150. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion triggered by the Merger would be timely, likely and sufficient. Barriers to entry and expansion hinder the ability of potential entrants or firms looking to expand to constrain the exercise of market power by incumbents.¹⁸⁴

Parties' submissions

151. The Parties submitted that the supply of water dispensers is a growing area with no or low barriers to entry and expansion. The Parties submitted that setting up a water dispenser business is easy, brand recognition is very low and machines are often (re)-labelled under different branding and competitive pressures in the UK and global market remain high.¹⁸⁵ The Parties identified a few potential new entrants or as having the potential to enter or expand into the supply of MFT in the UK.¹⁸⁶

CMA's assessment

152. In relation to MFT, the majority of rival water dispenser suppliers stated that entry is difficult. In particular, one competitor noted that due to the 'dominant' position of Zip, any growth of a new entrant would have to come from replacing existing Zip units.¹⁸⁷ Another competitor noted that a new entrant could need a long time to enter, and face high costs, in order to compete effectively against the established suppliers currently present.¹⁸⁸ Another competitor noted that 'the initial capital investment cost would be very substantial'.¹⁸⁹

153. Another barrier to entry and expansion mentioned by one competitor was that is difficult for customers to switch MFT supplier, given the changes required to the installed system and the long-term agreements (typically 5 years or more based on useful life). This competitor also noted that at the end of the contract it is generally

¹⁸⁴ CMA129, from paragraph 8.40.

¹⁸⁵ FMN, paragraphs 280, 281, 282 and 283.

¹⁸⁶ Including AquaTap and Samsung (Issues Letter Response, paragraph 3.63). The Parties also submitted that customers exert a considerable degree of buyer power since switching suppliers is very easy and a large number of other suppliers are available (Issues Letter Response, paragraph 3.58.) The CMA found, however, that there are a limited number of effective alternative MFT suppliers to OOH (see sub-section about existing suppliers of MFT to OOH customers) and some evidence suggests that switching is not easy (see paragraph 152). The CMA also notes that, as stated in the Merger Assessment Guidelines, 'other forms of buyer power that do not result in new entry [...] are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced' (see CMA129, paragraph 4.20).

¹⁸⁷ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 31.

¹⁸⁸ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 31.

¹⁸⁹ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 31.

easier to remain with the incumbent as it is more practical than removing and replacing systems.^{190, 191}

154. For the reasons set out above, the CMA believes that there are significant barriers to entry and expansion in the supply of MFT to OOH in the UK. The CMA has addressed possible entry and expansion by Samsung and Quooker above, and the CMA has not received evidence to suggest that entry or expansion by any other suppliers is likely to provide a material constraint on the Merged Entity.
155. As such, the CMA found that entry and/or expansion is not likely to be timely and sufficient to offset the effects of the substantial reduction of competition resulting from Merger in supply of MFT to OOH in the UK.

Horizontal unilateral effects in the commercialisation of BWC in the UK

156. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the commercialisation of BWC in the UK. In its assessment, the CMA considered evidence in relation to: (i) the Parties' and competitors' shares of supply; (ii) closeness of competition between the Parties; and (iii) the competitive constraint remaining post-Merger.

Shares of supply

Parties' submissions

157. Without prejudice to their view on the appropriate frame of reference, the Parties submitted estimated shares of supply for the commercialisation of BWC (overall) and the commercialisation of BWC to OOH customers, both based on installed base in the UK.¹⁹²
158. Based on these estimates, the Parties submitted that their combined share of supply in the commercialisation of BWC in the UK is [20-30]% with a [5-10]% increment. The Parties' estimates show that Waterlogic has a share of [20-30]%, followed by Eden Springs ([10-20]%), AquAid ([5-10]%), and a tail of smaller providers (none of whom have a share of above [0-5]%).¹⁹³

CMA's assessment

159. The CMA estimated shares for the commercialisation of BWC in the UK using actual figures provided the Parties and third parties on their respective installed

¹⁹⁰ Note of call with a third party on 27 April 2022.

¹⁹¹ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 31.

¹⁹² FMN, Tables 25 and 27. To calculate these estimated shares of supply, the Parties used their actual figures and data for third parties included in the 2021 West Europe Zenith Report (FMN, paragraph 175(b)).

¹⁹³ FMN, Table 25.

base of BWC in the UK in 2021.¹⁹⁴ For competitors that did not respond to the CMA’s merger investigation, the CMA used data sourced from the Zenith Reports.¹⁹⁵

160. The CMA has calculated shares of supply both including and excluding the ‘others’ category in Zenith (recognising that the CMA’s visibility over the competitive constraint exercised by suppliers in the ‘others’ category is limited). The CMA’s shares of supply estimates are set out in Table 2.

Table 2: Shares of supply by volume (installed base) in the commercialisation of BWC in the UK, 2021

<i>Supplier</i>	<i>Share including others (%)</i>	<i>Share excluding others (%)</i>
Culligan	[5-10]	[5-10]
Waterlogic	[20-30]	[30-40]
Combined	[20-30]	[40-50]
Eden Springs	[10-20]	[10-20]
AquAid	[5-10]	[10-20]
CoolerAid	[0-5]	[0-5]
Thirsty Work	[0-5]	[0-5]
BWT	[0-5]	[0-5]
Black Mountain Mineral Water Company	[0-5]	[0-5]
Rockwell Natural Mineral Water Company	[0-5]	[0-5]
Countrywise Water Coolers	[0-5]	[0-5]
Office Watercoolers	[0-5]	[0-5]
Seaton Spring Ltd	[0-5]	[0-5]
Love Water	[0-5]	[0-5]
Cosmetal-Celli	[0-5]	[0-5]
Others	[30-40]	
Total	100	100

Source: CMA analysis of the Parties’ actual data, third parties’ actual data and Zenith data.

161. The Parties’ estimates, and the CMA’s estimated shares are broadly consistent. The CMA estimates that Waterlogic is the largest supplier with share between [20-30]% and [30-40]% (depending on whether ‘others’ are included), followed by Eden Springs ([10-20]% to [10-20]%), AquAid ([5-10]% to [10-20]%), CoolerAid ([0-5]% to [0-5]%) and BWT ([0-5]% to [0-5]%).
162. Culligan has a share of supply between [5-10]% and [5-10]%. Based on these estimates for 2021, the Merged Entity would have a share of between [20-30]% and [40-50]%.

¹⁹⁴ FMN, Table 25 and competitor responses to CMA Competitor Questionnaire dated 23 June 2022, question 14.

¹⁹⁵ The CMA used data for 2021 provided in the 2022 Zenith Reports.

163. The CMA notes that the estimates in Table 2 do not provide a complete picture of the conditions of competition in the commercialisation of BWC in the UK, however the CMA considers that they provide useful information on the relative presence of the larger suppliers active in the commercialisation of BWC that will remain post-Merger. As such, the CMA has considered this information in the round together with other evidence on competitive constraints.

Closeness of competition

Parties' submissions

164. The Parties submitted that BWC units are relatively unsophisticated (being simple products with little differentiation in terms of design and functionality) and therefore highly commoditised¹⁹⁶ and that the Parties are not close competitors in the commercialisation of BWC.¹⁹⁷ In particular, the Parties submitted that:
- (a) The Parties' internal documents do not show that the Parties compete closely.¹⁹⁸
 - (b) Culligan [X] (and does not participate in any 'framework agreements'¹⁹⁹) and focuses on [X], whereas Waterlogic and a number of other competitors regularly compete for BWC tenders and participate in Framework Agreements.²⁰⁰
 - (c) The ability to service customers nationally is not an important dimension of competition.²⁰¹ This notwithstanding, Culligan does not compete closely for [Y]. Historically, Culligan's TWDC and Edgar's businesses were regional players (with TWDC primarily focused on London and Edgar's on London and the South East).²⁰² The majority ([X]% by volume (installed base) and [X]% by value in 2021) of Culligan's customers are supplied in a single region. By contrast, [X] proportion by volume ([X]% by volume (installed base) and [X]% by value in 2021) of Waterlogic's customers are serviced in more than one

¹⁹⁶ FMN, paragraphs 113, 115 and 308 and Issues Letter Response, paragraph 2.4.

¹⁹⁷ Issues Letter Response, paragraph 2.13.

¹⁹⁸ The Parties noted that, in general, references to each other in their internal documents reflect the fact that both Parties are global players, meaning that it makes sense that they refer to each other in the context of global strategy or review documents, as opposed to their more regional competitors) and pointed to internal documents that reference a broad range of competitors in the commercialisation of BWC in the UK including [X]. Issues Letter Response, paragraphs 2.42 and 2.88

¹⁹⁹ ie agreements between contracting bodies which require a formal tender process and govern the terms of contracts to be awarded. In particular, the Parties submitted a full list of the publicly available framework agreements (which list the agreed suppliers) in which Waterlogic participates that showed that Culligan does not participate in any of those agreements (Issues Letter Response, paragraph 2.40 and Table 5).

²⁰⁰ Issues Letter Response, paragraph 2.34.

²⁰¹ Issues Letter Response, paragraph 1.10.

²⁰² Issues Letter Response, paragraph 2.18 and 2.69(c).

region.²⁰³ Further, Culligan is focused on [redacted], whereas Waterlogic's customer base is less concentrated.²⁰⁴

- (d) Available data on customer switching point to the Parties not competing closely.²⁰⁵

CMA's assessment

165. The CMA notes that closeness of competition is of particular relevance to assessing the likelihood of horizontal unilateral effects in differentiated markets.²⁰⁶ The CMA received evidence that supports the Parties' submissions that the products involved in the commercialisation of BWC are relatively commoditised²⁰⁷ but that there may be some differentiation in terms of the services supplied.²⁰⁸ The CMA has therefore considered in its assessment of the competitive impact of the Merger the closeness of competition between the Parties. In its assessment, the CMA considered the following sources of evidence:

- (a) the Parties' internal documents;
- (b) third party views on closeness of competition between the Parties: and
- (c) data on customer locations and switching submitted by the Parties.

Parties' internal documents

166. The Parties' internal documents indicate that, of the suppliers active in the commercialisation of BWC in the UK, the Parties compete closely with a more limited set of suppliers, including each other.²⁰⁹

²⁰³ Issues Letter Response, paragraph 1.7 and 2.17 to 2.24.

²⁰⁴ Issues Letter Response, paragraph 2.24

²⁰⁵ Comprising: (i) an analysis of the new business opportunities in the UK recorded in the Parties' sales management systems for the period from April 2021 to March 2022 (the **Opportunity matching analysis**), which the Parties submitted shows that customers approached both Parties for only a very small proportion of the opportunities recorded in Culligan's and Waterlogic's datasets for this period (less than [redacted]% and less than [redacted]% respectively) (Issues Letter Response, paragraphs 2.15(b) and 2.25 to 2.30); (ii) an analysis of Waterlogic's available 'quits' records for the period from 1 January 2019 to 31 March 2022 (**Waterlogic's quits data**) which the Parties submitted shows that less than [redacted]% of Waterlogic's lost customers switched to Culligan during this period (Issues Letter Response, paragraphs 2.15(c) and 2.31 to 2.33); and (iii) an analysis of Waterlogic's tender data for 2020 and 2021 (**Waterlogic's tender data**) which the Parties submitted shows that [redacted] formal tender opportunities that Waterlogic participated in during this period (Issues Letter Response, paragraphs 2.15(d), 2.16 and 2.34 to 2.41).

²⁰⁶ CMA129, paragraph 4.8.

²⁰⁷ For example, a competitor noted that BWC is a very simple system and so is difficult to differentiate as a product (Note of call with a third party on 9 June 2022). A report prepared by consultants in the context of the Merger highlights that [redacted] (BDT, Annex 10-006, April 2021, page 115).

²⁰⁸ For example, geographical coverage offered and quality of service. For example, a report prepared by consultants in the context of the Merger notes that [redacted] (BDT, Annex 10-006, April 2021, page 76).

²⁰⁹ For example, a Waterlogic document titled [redacted] (Waterlogic, Annex 10-039, March 2020, slide 5). Culligan documents [redacted] (Culligan, CULBDT-0868, 1 December 2021, slide 4 and Culligan, Annex 10-007, undated,

Third party views

167. Competitors indicated that the Parties compete closely with several suppliers, including each other.
168. Almost all of the Parties' competitors who responded to the CMA's investigation identified both Culligan and Waterlogic as their closest competitors alongside Eden Springs (always identified as a close competitor together with the Parties), AquAid (frequently identified as a close competitor together with the Parties) as well as Cooleraid (identified a few times as a close competitor together with the Parties).²¹⁰
169. The CMA asked the Parties' customers to list any alternative suppliers or brands they would consider as an alternative to each of Waterlogic and Culligan and how strongly they compete with the respective Party. The CMA placed limited weight on this third party evidence, mainly given the limited number of responses and because some customers seemed to have limited knowledge of the competitors set in the supply of BWC in the UK. The views of customers, however, do not suggest that Culligan is a particularly close competitor of Waterlogic.
170. The CMA notes that most of the BWC customers (including customers of the Parties and third parties) that responded to the CMA's investigation, identified a supplier having national footprint for delivering replacement bottles as important to some degree. As discussed further below, the evidence suggests that Culligan is not providing a material number of multi-regional or national contracts.

Data on the Parties' customer locations and switching

171. The Parties submitted, while that the ability to service customers nationally is not in their view an important dimension of competition, Culligan cannot be said to be competing closely for customers seeking national coverage, given that the vast majority of customers to which Culligan sold or rented BWC units in 2021 were supplied only in one region and that Culligan's focus is on [REDACTED] (see paragraph

slide 5). A presentation prepared by a consultancy firm for BDT in the context of the Merger [REDACTED] (BDT, Annex 10-009, 28 April 2021, slide 42).

²¹⁰ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 16. The Parties submitted that these responses did not indicate closeness of competition between the Parties, in particular given that they appeared to identify the competitors as one of a number of 'close' competitors (Issues Letter Response, paragraph 2.43). As set out in the CMA's guidance, merger firms need not be each other's closest competitors for horizontal unilateral effects to arise (it is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger) (CMA129, paragraph 4.8). The CMA therefore considers that the views of third parties indicate that the Parties compete closely with each other and a limited set of other commercialisation suppliers, as described in this paragraph.

164(c)).²¹¹ As such, the CMA has considered whether for these customers the Parties are less close competitors.

172. A review of data submitted by the Parties indicated that, whilst both Parties supply across the UK, Culligan does not play a material role in serving customers across large geographic footprints. Culligan has only [redacted] customers for which it supplies BWC across three or more UK regions; the vast majority of its customer contracts cover only one or two UK regions. Waterlogic does play a more significant role in serving customers with large geographic footprints; Waterlogic has [redacted] customers for which it supplies BWC across three or more UK regions.²¹² This indicates that, in both absolute terms and relative to Waterlogic, Culligan is not competing frequently for customers seeking national coverage.
173. The Parties submitted the opportunity matching analysis and Waterlogic's tender data at a late stage in the CMA's investigation. While these analyses indicate the Parties may not be competing closely the CMA has had limited time to assess the evidence and as such places limited weight on it.²¹³ In addition, while Waterlogic's tender data indicates that Culligan [redacted]. The CMA notes that tender processes represent [redacted] of Waterlogic's business. As a result, while Waterlogic's tender data does appear to show that the Parties are not close competitors for [redacted] this has no bearing on whether they are close competitors for the majority of customers served by Waterlogic (based on 2021 new rentals/sales).

Conclusion on closeness of competition between the Parties

174. For the reasons set out above, the CMA considers that the evidence points to the Parties competing closely with each other and other suppliers of BWC. The CMA notes that for certain customers (eg those contracting through formal tender processes and those seeking national coverage) the Parties may not be as close.

Alternative suppliers

Parties' submissions

175. The Parties submitted that post-Merger, the Merged Entity will be constrained by large number of players. In particular, the Parties noted that (i) neither the ability to offer national coverage nor the ability to provide a portfolio of different types of water dispenser is an important dimension of competition, but in any event for the

²¹¹ The Parties noted that customers located in these areas make up [redacted]% of Culligan's customers in 2021 while [redacted]% of Culligan's customer base are located in four regions (London, South East, East of England and East Midlands) whereas Waterlogic's top four regions ([redacted]) account for only [redacted]% of its customer base. The Parties further noted that only [redacted]% of Culligan's customer base were in Yorkshire and the Humber, the North East, Northern Ireland, Scotland and Wales (Issues Letter Response, paragraph 2.24).

²¹² Issues Letter Response, Table 1 and Table 2.

²¹³ For example, the Opportunity matching analysis only references [redacted] and does not [redacted] (Annex ILR 1, paragraphs 2.1 and 2.2).

small number of customers for whom these is important, many players can service this demand²¹⁴ and (ii) outside of the core competitive set of ‘pure’ water dispenser competitors, wholesalers and suppliers in adjacent spaces (including vending machine suppliers and suppliers of coffee or office supplies).²¹⁵ Considering the ‘core competitive set’ in the commercialisation of BWC in the UK, the Parties submitted that the BWC space features a number of material competitors including ‘higher profile’ competitors such as AquAid, Cooleraid, BWT, Office Water Coolers and Countrywise Coolers²¹⁶ as well as smaller players who exert a significant competitive constraint (and benefit from servicing advantages such as having local knowledge and contacts, dense routing and a lower overhead structure).²¹⁷ The Parties also submitted that the Parties’ BWC operations are constrained by other water cooler suppliers, particularly BFC suppliers.²¹⁸

CMA’s assessment

176. The CMA has considered whether the remaining competitive constraints on the Parties are sufficient to offset the loss of competition between the Parties as a result of the Merger.
177. The evidence received by the CMA indicates that the Merged Entity will face constraint from a number of BWC commercialisation suppliers able to service customers across the UK,²¹⁹ including in particular strong constraints from Eden Springs and AquAid and, at least moderate constraints from, Cooleraid, BWT and Office Watercoolers. Both competitors and customers identified Eden Springs, AquAid and Cooleraid as competitors to the Parties and all of these competitors [redacted] (see paragraph 166) In addition, Waterlogic’s tender data indicates that [redacted].²²⁰ A further submission from the Parties suggests that Eden Springs, AquAid, BWT and Cooleraid all participate in framework agreements.^{221, 222} In addition to the competitors identified above, the Parties submitted that there are a large number of other suppliers active, both nationally and regionally, in the commercialisation of

²¹⁴ With regard to national coverage, the Parties identified 58 suppliers that offer BWC across the UK including 52 that explicitly state that they offer nationwide coverage on their websites (Issues Letter Response, paragraph 2.69 and Annex ILR 8). Considering ‘portfolio’ suppliers, the Parties submitted that there is a large number of suppliers who could (and do) provide all of BWC, BFC and MFT amongst other products including, at the very least, AquAid, Aqua Cool, Eden Springs, Blue Mountain, Thirsty Work, Cooleraid, BWT and Rocwell Water (Issues Letter Response, paragraph 2.74).

²¹⁵ Issues Letter Response, paragraph 2.47.

²¹⁶ Issues Letter Response, paragraph 2.88.

²¹⁷ Issues Letter Response, paragraphs 2.91 to 2.92.

²¹⁸ Issues Letter Response, paragraph 2.98.

²¹⁹ Third party responses to CMA’s Competitor Questionnaire dated 23 June 2022, question 15(b).

²²⁰ The Parties, Annex MN021, undated.

²²¹ Issues Letter Response, Table 5

²²² Waterlogic’s tender data further indicates [redacted] (Issues Letter Response, Table 4). As noted above, given the late stage during the Phase 1 investigation process at which this evidence was presented (in response to the Issues Letter) it has not been possible for the CMA to properly assess the evidence and as such has placed limited weight on it.

BWC in the UK (including over 50 that offer BWC across the UK).²²³ The Parties submitted that these suppliers could serve customers with national requirements, including through outsourcing, subcontracting and through network groups such as the Associated Watercooler Services.²²⁴

178. This list includes a range of suppliers active in the commercialisation of BWC in the UK, including traditional cooler companies, as well as other suppliers operating different business models (for example, suppliers who sell BWC and associated sundries for servicing and maintenance) that would continue to compete with the Parties following the Merger. The CMA has not gathered evidence in relation to each of these alternative suppliers but notes that desk research indicates that at least some of the suppliers mentioned by the Parties offer very similar services to the Parties and are likely to act as some constraint on the Parties at least at regional level.²²⁵
179. Whilst the CMA has not assessed each of these other competitors in turn or in detail, given the relatively undifferentiated nature of the service provided, and the large number of competitors listed, the CMA considers that these other suppliers will, in aggregate, pose at least some limited constraint on the Parties.
180. A few competitors²²⁶ and customers²²⁷ expressed concerns in relation to the Merger with respect to BWC, including that it could further reduce competition and the alternatives available for customers (including those seeking national coverage).²²⁸ The CMA has taken into account these concerns in the context of the overall evidence, including evidence that indicates that there is a sufficient number of alternative competitors, including BWC suppliers that can serve customers with national requirements.
181. The CMA therefore believes that, in light of the evidence set out above, the Parties face a range of rivals in the commercialisation of BWC in the UK that will continue to constrain the Merged Entity post-Merger.

Conclusion on horizontal unilateral effects in the commercialisation of BWC

182. After the Merger, the Parties will have a combined share of supply (by installed basis) of [20-30%] with an increment of [5-10%]. While the Parties compete against

²²³ Issues Letter Response, Paragraph 2.69

²²⁴ Issues Letter responses, paragraph 2.69(b)(iii). The CMA has not considered these submissions in detail given its finding that there are sufficient alternative rivals that can serve customers with national requirements without out.

²²⁵ Further, while the CMA places limited weight on the Waterlogic quits data (see paragraph 173) this dataset indicates that [§<].

²²⁶ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 33.

²²⁷ Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 27.

²²⁸ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 33. Note of call with a third party on 10 May 2022. Note of call with a third party on 27 April 2022.

each other, the Parties are not particularly close competitors. There are other competitors that compete at least as closely with the Parties in the commercialisation of BWC in the UK.

183. The CMA found that the Merged Entity will continue to face at least two strong competitors (Eden Springs and AquaAid) and two moderate competitors (CoolerAid and BWT), that can provide a national service, as well as a large number of smaller competitors and regionally focussed competitors that pose at least a limited constraint, either on a national or local basis.
184. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the commercialisation of BWC in the UK.

Horizontal unilateral effects in the commercialisation of BFC in the UK

185. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the commercialisation of BFC in the UK. In its assessment, the CMA considered (i) the Parties' and competitors' shares of supply (ii) closeness of competition between the Parties and (iii) the competitive constraint on the Merged Entity from alternative suppliers post-Merger.
186. The Parties submitted that post-Merger the Merged Entity would have a moderate estimated share of supply ([30-40]%) in the commercialisation of BWC with a minimal increment arising from Culligan ([0-5]%)²²⁹ and would compete with a large number of alternative suppliers including the following (for whom data is provided in the Zenith Reports and estimated shares were provided): Virgin Pure ([5-10]%), AquaAid ([5-10]%), Eden Springs ([5-10]%), Cooleraid ([5-10]%), Office WaterCoolers ([0-5]%), Culligan ([0-5]%), BWT ([0-5]%) and a tail of smaller competitors.²³⁰
187. The CMA estimated shares for the commercialisation of BFC in the UK using actual figures provided the Parties and third parties on their respective installed base of

²²⁹ FMN, paragraphs 72(b) and 209.

²³⁰ FMN, Table 26. The Parties submitted that there are at least 128 known competitors offering BWC, BFC and MFT in the UK (while Zenith only includes 21 named competitors in their data along side an 'other' segment) with examples of BFC commercialisation suppliers not named in Zenith including Bibo, Thirstywork, Borg and Overstrom, Aquacool, 2468, Selecta, Liquidline, Freshground, Crown Coffee, AA Coolers and Filtered Water Cooler (FMN, paragraph 271).

BFC in the UK in 2021.²³¹ The CMA's share of supply estimates are set out in Table 3.²³²

Table 3: Shares of supply by volume (installed base) in the commercialisation of BFC in the UK, 2021

<i>Supplier</i>	<i>Share, including others (%)</i>	<i>Share, excluding others (%)</i>
Culligan	[0-5]%	[0-5]%
Waterlogic	[30-40]%	[40-50]%
Combined	[30-40]%	[40-50]%
Eden Springs	[10-20]%	[10-20]%
Virgin Pure	[5-10]%	[10-20]%
AquAid	[5-10]%	[10-20]%
Cooleraid	[5-10]%	[5-10]%
Office Watercoolers	[0-5]%	[5-10]%
Thirsty Work	[0-5]%	[0-5]%
BWT	[0-5]%	[0-5]%
Bibo	[0-5]%	[0-5]%
Brita	[0-5]%	[0-5]%
Countrywise	[0-5]%	[0-5]%
Love Water	[0-5]%	[0-5]%
Others	[20-30]%	-
Total	100%	100%

Source: CMA analysis of the Parties' and third parties' data.

188. The Parties' estimates and the CMA's estimated shares are broadly consistent. The CMA estimates that Waterlogic is the largest supplier with a share of supply between [30-40]% and [30-40]% (depending on whether or not the 'others' category is included), followed by Eden Springs ([10-20]% to [10-20]%), Virgin Pure ([5-10]% to [10-20]%), AquAid ([5-10]% to [10-20]%) and Cooleraid ([5-10]% to [5-10]%). All other suppliers are smaller, with none having a share above [5-10]% (and most having less than [0-5%]).

189. Culligan is one of these smaller suppliers, with a share of supply in commercialisation of BFC between [0-5]% and [0-5]%.²³³ The combined share of

²³¹ FMN, Table 25 and competitor responses to CMA Competitor Questionnaire dated 23 June 2022, question 19(d). For competitors that did not respond to the CMA's merger investigation, the CMA used data (for 2021) sourced from the 2022 Zenith Reports.

²³² Consistent the approach taken in respect of the commercialisation of BWC, the CMA's estimates calculated shares of supply both including and excluding the 'others' category in Zenith (recognising that its visibility over the competitive constraint exercised by suppliers in the 'others' category is limited). The CMA notes the Parties' submissions that the size of the 'others' category may be understated but has little visibility as to whether this is the case.

²³³ The evidence provided by Culligan about its expected growth in the supply of BFC in the UK absent the Merger [×]. Culligan explained that Culligan's growth estimates [×]. Culligan estimates that, [×]. See Parties Response to RFI 8, question 6.

supply of the Merged Entity is between [30-40]% and [40-50]%, with a small increment brought by the Merger.

190. The evidence available to the CMA indicates that, of the suppliers active in the commercialisation of BFC in the UK, the Parties may compete closely with a more limited set of suppliers but are not particularly close competitors.
- (a) The UK Zenith Report shows that, while both Waterlogic and Culligan are both active in the commercialisation of BFC in the UK and ‘strong competition’ in the supply of BFC ‘is starting to come from Culligan’, other competitors such as Eden Springs and Virgin Pure have the highest installed base and have grown in the last year, according to this report;²³⁴ and
 - (b) Almost all the Parties’ competitors who responded to the CMA’s merger investigation considered the Parties as alternative suppliers to each other²³⁵. One third of the Parties customers considered the other Party to be a close alternative, while listing also other close or moderate alternatives.²³⁶
191. The CMA separately considered whether the remaining competitive constraints on the Parties are sufficient to offset the loss of competition between the Parties as a result of the Merger. The evidence received by the CMA indicates that the Merged Entity will face constraint from a number of BFC commercialisation suppliers.
- (a) the Parties’ internal documents, and a third party report, refer to a number of alternative suppliers of BWC, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED];²³⁷
 - (b) most of the customers that responded to the CMA’s merger investigation indicated that Eden Springs and Brita are competitors of the Parties. One customer who considers Brita to be a strong alternative said this was because ‘they are higher spec than Waterlogic’.²³⁸ Another customer told the CMA that Eden Springs is a close competitor to the Parties because they have a ‘similar offering’.²³⁹ Other BFC suppliers mentioned by these customers (although not as frequently as Eden Springs and Brita) were AquAid, Cooleraid, Lincat and 2468; and
 - (c) the Parties’ competitors also frequently mentioned Eden Springs, AquAid and Cooleraid as close competitors to the Parties. Others mentioned as close

²³⁴ 2022 UK Zenith Report, pages 31 and 32.

²³⁵ Third party responses to CMA’s Competitor Questionnaire dated 23 June 2022, question 21.

²³⁶ Third party responses to CMA’s Customer Questionnaire dated 23 June 2022, questions 16 and/or 17.

²³⁷ 2022 UK Zenith Report, page 32, Culligan, Annex 10-022, November 2021, slide 6; Culligan, Annex 10-00, undated, slide 5; BDT, Annex 10-006, April 2021, slide 12; Culligan, Annex 10-007, undated, slide 5; BDT, CULBDT-0739, 16 September 2021, slide 2; and BDT, CULBDT-0834, 9 November 2021, slides 40, 42 and 58.

²³⁸ Third party responses to CMA’s Customer Questionnaire dated 23 June 2022, questions 16 and/or 17.

²³⁹ Third party responses to CMA’s Customer Questionnaire dated 23 June 2022, questions 16 and/or 17.

competitors, albeit less frequently, are Virgin Pure, Thirstywork, Bibo, Cosmetal and Watercoolers Direct.²⁴⁰

192. A few competitors expressed concerns that the Merger could reduce competition.²⁴¹ A small number of customers raised concerns that they could find few options for BFC pre-Merger and that the Merger may exacerbate this.²⁴² The CMA has taken into account these concerns in the context of the overall evidence, including evidence that indicates that there is a sufficient number of alternative competitors.

Conclusion on horizontal unilateral effects in the commercialisation of BFC

193. For the reasons set out above, the CMA believes post-Merger, the Merged Entity will have a material share of supply, however the increment brought about the Merger will be very small, the Parties are not particularly close competitors and there are a number of other suppliers that will continue to constrain the Merged Entity post-Merger, including Eden Springs, AquAid and Cooleraid, as well as other smaller competitors of broadly the same size as Culligan.
194. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the commercialisation of BFC in the UK.

Horizontal unilateral effects in the manufacturing of BFC supplied in the UK

195. The CMA has assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the manufacture of BFC supplied in the UK.
196. The Parties submitted share of supply estimates for the manufacturing and supply (sale) of BFC to third party operators (commercialisation suppliers) in the UK by volume which estimated the Parties as having a combined share of [5-10]% with an increment of [0-5]%.²⁴³ The Parties submitted that BFC units are relatively unsophisticated and that , the manufacturing market is highly competitive and commoditised, with many global and regional players.²⁴⁴ In particular, the Parties submitted that they face strong competition from other large manufacturers, such as Borg & Overström, Brita, Charm, Cornelius, Cosmetal/Celli, Crystal Mountain, EBAC, ELKAY, Midea, Mistral, Natural Choice, Primo, Rheavendos, Servomat,

²⁴⁰ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 21.

²⁴¹ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 33.

²⁴² Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 27.

²⁴³ FMN, Table 21. The estimates exclude machines manufactured by the Parties for self-supply as such 'captive sales' do represent a competitive activity, given that these units were manufactured for use by the Parties' downstream operations and therefore were not available for purchase by third-party commercialisation suppliers (FMN, paragraph 175(a)(iii)). On a conservative basis, the Parties estimates included units manufactured by the Parties and procured by the Parties from third-parties and sold to third party commercialisation suppliers (FMN, paragraph 199).

²⁴⁴ FMN, paragraphs 308 and 323.

SCS Tec, Sinop and Zerica, among others.²⁴⁵ Given that the Parties' share of supply estimates and the other evidence available to the CMA did not raise *prima facie* competition concerns, the CMA has not attempted to reconstruct the Parties' shares of supply estimates using competitors' actual data.

197. The CMA has considered a range of evidence to assess the closeness of competition between the Parties and the constraint imposed on the Parties by their rivals in the manufacture of BFC supplied in the UK.
198. The Parties' competitors who responded to the CMA's merger investigation consider the Parties as competitors and among the largest manufacturers of BFC.²⁴⁶ A few of Culligan's customers, who responded to the CMA's merger investigation, also considered Waterlogic to be an alternative to Culligan.²⁴⁷ However, none of Waterlogic's customers considered Culligan to be an alternative to Waterlogic.²⁴⁸
199. The CMA received other evidence that the Parties currently face competitive constraints from a number of other BFC manufacturers.
 - (a) The West Europe Zenith Report indicates that there are a number of manufacturers of BFC based in Italy, a major manufacturing hub of BFC, where 77% of units were manufactured for export. These manufacturers include: Blupura (Culligan), Italbedis, Cosmetal, Zerica and Soprano. The same report shows that Italbedis is larger than Culligan both in terms of overall production and exports.²⁴⁹
 - (b) All of Culligan's customers responding to the CMA's merger investigation indicated AA First and Borg & Overström as strong (or at least moderate) alternatives to Culligan. Other manufacturers mentioned by these customers (although not as frequently as AA Frist and Borg & Overström) were Crystal Mountain and Clover.²⁵⁰ The Parties' competitors also mentioned (although not as frequently as the Parties): Borg & Overström, Cosmetal, AA First, Crystal Mountain, Charm/Azure, Ebac, Canaletas, Clover and Midea.²⁵¹
200. Customers and competitors who responded to the CMA's market testing raised no specific concern about in relation to the horizontal unilateral effects of the Merger in the manufacturing of BFC supplied in the UK.²⁵²

²⁴⁵ FMN, paragraph 179 and Table 44.

²⁴⁶ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 7.

²⁴⁷ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 10.

²⁴⁸ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 11.

²⁴⁹ 2022 West Europe Zenith Report, pages 209 and 210.

²⁵⁰ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 10.

²⁵¹ Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 7.

²⁵² Third party responses to CMA's Competitor Questionnaire dated 23 June 2022, question 33.

Conclusion on horizontal unilateral effects in the manufacturing of BFC supplied in the UK

201. For the reasons set out above, the CMA believes that the Parties' combined share of supply is likely to be low, with a very small increment arising from the Merger, and there are a number of other manufacturers that will constrain the Merged Entity post-Merger.
202. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the manufacture of BFC supplied in the UK.

THIRD PARTY VIEWS

203. The CMA contacted customers and competitors of the Parties. Some third parties raised general concerns regarding consolidation in the water dispenser industry and that the Merger would bring together two large players in this space (with some noting that the Merged Entity would be vertically integrated in some respects).²⁵³ One competitor²⁵⁴ raised a concern that the Merger would lead to job losses and one customer noted a concern that the Merger could disrupt current service levels.
204. Third party comments have been taken into account where appropriate in the competitive assessment above.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

205. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of MFT to OOH customers in the UK. The CMA found that the Merger does not give rise to a realistic prospect of an SLC in any other markets in the UK.

²⁵³ Third party responses to CMA Competitor Questionnaire dated 23 June 2022, question 33. Third party responses to CMA Customer Questionnaire dated 23 June 2022, question 27. Note of call with a third party on 9 June 2022. Note of call with a third party on 9 June 2022. Note of call with a third party on 17 May 2022. Note of call with a third party on 13 June 2022.

²⁵⁴ Third party response to CMA Competitor Questionnaire dated 23 June 2022, question 33.

DECISION

206. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
207. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²⁵⁵ The Parties have until 25 August 2022²⁵⁶ to offer an undertaking to the CMA.²⁵⁷ The CMA will refer the Merger for a phase 2 investigation²⁵⁸ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides²⁵⁹ by 2 September 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Sorcha O'Carroll
Senior Director, Mergers
Competition and Markets Authority
18 August 2022

²⁵⁵ Section 33(3)(b) of the Act.

²⁵⁶ Section 73A(1) of the Act.

²⁵⁷ Section 73(2) of the Act.

²⁵⁸ Sections 33(1) and 34ZA(2) of the Act.

²⁵⁹ Section 73A(2) of the Act.