

ACQUISITION BY OSMOSIS BUYER LIMITED OF FIREWALL S.A.R.L.

Undertakings given by BDT Capital Partners LLC and Firewall Holding S.à. r.l to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Whereas:

- (a) Pursuant to the Share Purchase Agreement of 21 December 2021 (the *SPA*), 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*) (the *Transaction*), such that BDT and Firewall will cease to be distinct for the purposes of the Enterprise Act 2002 (the *Act*);
- (b) Under section 33(1) of the Act the Competition and Markets Authority (*CMA*) has a duty to refer an anticipated merger for a Phase 2 investigation where it 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 that may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may result from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 18 August 2022 (the *Decision*), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by BDT and Firewall (together, the *Parties*) are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may result from the Transaction, or may be expected to result from it, as specified in the Decision;
- (f) Prior to the acceptance of these undertakings by the CMA, the Parties entered into a legally binding agreement of 05 October 2022 to divest the Divestment Business as a

going concern to a Proposed Purchaser on terms approved by the CMA (the *Agreement*). The Agreement was conditional only on formal approval of the Proposed Purchaser by the CMA, Australian Competition and Consumer Commission (*ACCC*) and New Zealand Commerce Commission (*NZCC*); approval of the terms and conditions of the Agreement by the CMA; approval of the terms and conditions under which the Proposed Purchaser will acquire the shares of Billi Australia Pty Ltd and Billi New Zealand Limited by the ACCC and NZCC; and completion of the Transaction. The Agreement includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with the Parties and other competitors in the supply of multifunctional taps (*MFT*) to non-residential (out-of-home) (*OOH*) customers in the UK.

NOW THEREFORE the Parties hereby give to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may result from it or may be expected to result from it.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by the Parties, they are accepted by the CMA.

2 DIVESTMENT OF THE DIVESTMENT BUSINESS

- 2.1 The Parties shall ensure that the completion of the divestment of the Divestment Business to the Proposed Purchaser contemplated by the agreement referred to in recital (f) of these undertakings takes place within a period not exceeding [~~30~~] from the date these undertakings take effect.
- 2.2 The Parties shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Business.
- 2.3 In the event that the Parties fail to complete the divestment of the Divestment Business in accordance with paragraphs 2.1 and 2.2 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require the Parties to

divest the Divestment Business as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT

3.1 For the purposes of the CMA approving a Proposed Purchaser and the terms of the divestment of the Divestment Business in accordance with these undertakings, the Parties shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which may result from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) the Proposed Purchaser is independent of and unconnected to the Parties and the Group of Interconnected Bodies Corporate to which the Parties belong and any Associated Person or Affiliate of the Parties or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with the Parties and other competitors in the supply of MFT to OOH customers in the UK from the date of completion of the divestment of the Divestment Business;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require the Parties to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

4 APPOINTMENT OF A TRUSTEE

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as the Parties have not satisfied, or where the CMA has reasonable grounds for believing that the Parties will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with paragraph 2 above.

4.2 Within 5 Working Days of the CMA notifying the Parties in writing that it must do so, the Parties shall propose to the CMA for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

4.3 The Parties and/or any individuals nominated pursuant to paragraph 4.2 above shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of the Parties and of the Group of Interconnected Bodies Corporate to which the Parties belong and of any Associated Person or Affiliate of the Parties or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of the Parties, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by the Parties and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, the Parties shall use their best endeavours to appoint

from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) the Parties fail to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by the Parties pursuant to paragraph 4.2 above is approved by the CMA; or
- (c) the Parties are unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

The Parties shall use their best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. The Parties shall use their best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, the Parties shall, if requested to do so in writing by the CMA, use their best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. The Parties shall use their best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by

the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

5 THE MANDATE

5.1 The terms of the mandate proposed by the Parties pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at the Parties' expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

6 FUNCTIONS OF TRUSTEE

6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.

6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);

- (b) any other transfer of interests that will take effect with the sale;
 - (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (d) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (e) the formation or winding up of a company.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor the Parties' compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that the Parties are failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to the Parties to take such steps as may be specified or described in the directions for the purpose of securing the Parties' compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require the Parties to:
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds

that the Parties are failing or will fail to comply with any of its obligations under these undertakings.

- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of the Parties nor shall the Trustee Functions be extended or varied in any way by the Parties save with the prior express written consent of the CMA.

7 OBLIGATIONS OF THE PARTIES FOLLOWING APPOINTMENT OF TRUSTEE

- 7.1 The Parties shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

- 7.2 The Parties shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

8 REMUNERATION OF TRUSTEE

- 8.1 The Parties shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

9 INTERIM ACTION

- 9.1 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, the Parties shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that, other than as agreed in writing by the CMA, or as otherwise set out in these undertakings:

- (a) the Divestment Business is carried on separately from the Parties' Businesses and the Divestment Business's separate sales or brand identity is maintained;

- (b) the Divestment Business and the Parties' Businesses are maintained as a going concern and sufficient resources are made available for the development of the Divestment Business and the Parties' Businesses, on the basis of their respective pre-Transaction business plans;
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by the Divestment Business are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the Divestment Business and the Parties' Businesses:
 - (i) all of the assets of the Divestment Business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Business are disposed of; and
 - (iii) no interest in the assets of the Divestment Business is created or disposed of;
- (f) there is no integration of the information technology of the Divestment Business and the Parties' Businesses, and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the Divestment Business and the Parties' Businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Business will be carried out by the Divestment Business alone and for the avoidance of doubt the Parties' Businesses will not negotiate on behalf of the Divestment Business (and vice versa) or enter into any joint agreements with the Divestment Business (and vice versa);
- (h) all existing contracts of the Divestment Business and the Parties' Businesses continue to be serviced by the business to which they were awarded;
- (i) no changes are made to Key Staff of the Divestment Business;
- (j) no Key Staff are transferred between the Divestment Business and the Parties' Businesses;

- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (l) no Confidential Information relating to either of the Divestment Business or the Parties' Businesses shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the Parties' Businesses (or any of their employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for the Parties to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by the Parties in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

9.2 At all times, the Parties will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the Divestment Business;
- (b) any interruption of the Divestment Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- (c) all substantial customer volumes lost by the Divestment Business; and
- (d) substantial changes in the Divestment Business's contractual arrangements or relationships with key suppliers.

10 CONTINUED SEPARATION

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, the Parties, or any member of the Group of Interconnected bodies Corporate to which the Parties belong:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) an Interest in the Divestment Business; or

- (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of the Parties or of any members of the Group of Interconnected Bodies Corporate to which the Parties belong of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of the Parties or any member of the Group of Interconnected Bodies Corporate to which the Parties belong for as long as they are an employee or director of the Parties or any member of the Group of Interconnected Bodies Corporate to which the Parties belong holds or is nominated to any directorship or managerial position in the Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of the Parties or of any member of the Group of Interconnected Bodies Corporate to which the Parties belong directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b), and 10.1(c) above.

11 COMPLIANCE

11.1 The Parties shall comply promptly with such written directions as the CMA may from time to time give:

- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or

- (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

11.2 The Parties shall co-operate fully with the CMA when the CMA is:

- (a) monitoring compliance with the provisions of these undertakings; and
- (b) investigating potential breaches of the provisions of these undertakings.

11.3 The Parties shall procure that any member of the same Group of Interconnected Bodies Corporate as the Parties comply with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as the Parties shall be attributed to the Parties for the purposes of these undertakings.

11.4 Where any Affiliate of the Parties is not a member of the same Group of Interconnected Bodies Corporate as the Parties, the Parties shall use their best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

12 PROVISION OF INFORMATION

12.1 The Parties shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

13 EXTENSION OF TIME LIMITS

13.1 The CMA may, in response to a written request from the Parties, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

14 SERVICE

14.1 BDT hereby authorises Freshfields Bruckhaus Deringer LLP (*Freshfields*), whose address for service is 100 Bishopsgate, London EC2P 2SR, United Kingdom, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to BDT, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).

14.2 Unless BDT informs the CMA in writing that Freshfields has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any

document, order, request, notification or other communication shall be validly served on BDT if it is served on Freshfields; and service shall be deemed to have been acknowledged by BDT if it is acknowledged by Freshfields or such other nominee.

- 14.3 Paragraph 14.2 above has effect irrespective of whether, as between BDT and Freshfields or other nominees, Freshfields or other nominees has or continues to have any authority to accept and acknowledge service on BDT's or any of its respective Subsidiaries' behalf.
- 14.4 No failure or mistake by Freshfields or other nominees (including a failure to notify BDT of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 14.5 Any communication from BDT to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ or such other person or address as the CMA may direct in writing.
- 14.6 Firewall hereby authorises Skadden, Arps, Slate, Meagher & Flom LLP (*Skadden*), whose address for service is 40 Bank Street, London, E14 5DS, United Kingdom to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to the Firewall, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 14.7 Unless Firewall informs the CMA in writing that Skadden has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Firewall if it is served on Skadden; and service shall be deemed to have been acknowledged by Firewall if it is acknowledged by Skadden or such other nominee.
- 14.8 Paragraph 14.7 above has effect irrespective of whether, as between Firewall and Skadden or other nominees, Skadden or other nominees has or continues to have any authority to accept and acknowledge service on Firewall's or any of its respective Subsidiaries' behalf.
- 14.9 No failure or mistake by Skadden or other nominees (including a failure to notify Firewall of the service of any document, order, request, notification or other

communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.

- 14.10 Any communication from Firewall to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ or such other person or address as the CMA may direct in writing.

15 EFFECT OF INVALIDITY

- 15.1 Should any provision of these undertakings be contrary to law or invalid for any reason, the Parties undertake to continue to observe the remaining provisions.

16 GOVERNING LAW

- 16.1 The Parties recognise and acknowledge that these undertakings shall be governed and construed in all respects in accordance with English law.
- 16.2 In the event that a dispute arises concerning these undertakings, the Parties undertake to submit to the courts of England and Wales.

17 TERMINATION

- 17.1 The Parties recognise and acknowledge that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 17.2 The Parties recognise and acknowledge that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

18 INTERPRETATION

- 18.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 18.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

18.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.

18.4 For the purposes of these undertakings:

“**the Act**” means the Enterprise Act 2002;

“**Affiliate**” a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

“**Assets**” means the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as described in more detail in Schedule 2;

“**Associated Person**” means a person or persons associated with either of the Parties within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“**BDT**” means BDT Capital Partners, LLC (401 North Michigan Avenue, Suite 3100, Chicago IL 60611, United States, registered number 0001510974) including Osmosis;

“**Business**” has the meaning given by section 129(1) and (3) of the Act;

“**CMA**” means the Competition and Markets Authority or any successor body;

“**Confidential Information**” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“**Control**” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“**Decision**” means the CMA’s decision under section 33 of the Act dated 18 August 2022 in connection with the Transaction;

“**Dedicated**” means solely relating to Billi-branded MFTs, and “**Dedicated Contracts**” means contracts relating solely to Billi-branded MFTs;

“Divestment Business” means the business or businesses as defined in Schedule 1 which the Parties commit to divest;

“enterprise” has the meaning given in section 129(1) of the Act;

“Excluded assets” means those assets listed in Schedule 3;

“Firewall” means Firewall Holdings S.A R.L. (1, Route d’Esch, L – 1470 Luxembourg, Grand Duchy of Luxembourg, registered number B 191674);

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Key Staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

“Osmosis” means Osmosis Buyer Limited (Fourth Floor Abbots House, Abbey Street, Reading, Berkshire RG1 3BD, UK, registered number: 13404693), including Subsidiaries (including Culligan);

“Parties” means BDT and Firewall;

“Parties’ Businesses” means the businesses of BDT and Firewall and their respective Groups of Interconnected Bodies Corporate carried on as at the Effective Date;

“Proposed Purchaser” means Strix or such other proposed purchaser for the Divestment Business;

“Strix” means Strix (U.K.) Limited (Doddlestone House Bell Meadow Business Park, Park Lane, Pulford, Chester, CH4 9EP, registered number: 02570237);

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“the Transaction” means the merger described at paragraph (a) above;

“Trustee” means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in paragraph 6;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Working Day” means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Signed by BDT and Firewall and accepted by the CMA on [insert] 2022

FOR AND ON BEHALF OF BDT

Signature

Name

Title

Date

FOR AND ON BEHALF OF FIREWALL

Signature

Name

Title

Date

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA:

SCHEDULE 1: DESCRIPTION OF THE DIVESTMENT BUSINESS

- (1.) The Divestment Business consists of Waterlogic's global MFT business which operates under the Billi brand. The Divestment Business comprises all tangible (e.g., the sole manufacturing facility in Thomastown, Victoria, Australia) and intangible assets (e.g., intellectual property rights) that contribute exclusively to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.
- (2.) The global Billi MFT business operates through four Dedicated legal entities and several other entities in the UK shared with Waterlogic. The relevant assets in the UK will be transferred to a newly incorporated entity (Billi UK Limited). The divestment contemplated in these UILs will be implemented through a share sale involving the transfer of 100% of the equity interest of the following legal entities:
 - (a.) In Australia:
 - (i.) Billi Australia Pty Ltd (ACN 624 854 829);
 - (ii.) Billi R&D Pty Ltd (ACN 136 662 014); and
 - (iii.) Billi Financial Services Pty Ltd (ACN 613 926 328).
 - (b.) In New Zealand: Billi New Zealand Limited (NZBN 9429049451269).
 - (c.) In the UK: Billi UK Limited (registered number 14350628).
- (3.) These entities hold the tangible and intangible property needed to continue to operate the Divestment Business, including:
 - (a.) All tangible and intangible property listed in Schedule 2;
 - (b.) Real property: the Billi manufacturing plant located in Thomastown (near Melbourne), Australia, which exclusively produces all Billi products supplied globally, including to the UK.
- (4.) The Parties will also provide the Divestment Purchaser with a Transitional Services Agreement (*TSA*) at their option for certain back-office functions that will not form part of the Divestment Business. The expected duration of these transitional services, which are to be provided at cost, can be found in Schedule 2.

SCHEDULE 2: PURCHASED ASSETS

The Divestment Business includes, but is not limited to:

(1.) The following **main tangible assets**:

- (a.) The leased manufacturing plant located in Thomastown (near Melbourne), Australia, which exclusively produces all Billi products supplied globally, including to the UK.
- (b.) Waterlogic's products and associated maintenance services developed, licensed, sold, provided or offered by the Divestment Business under the Billi brand, along with those additional products and associated maintenance services of the Divestment Business under development.
- (c.) All of the tangible personal property, equipment, machinery and tools that are primarily related to the Divestment Business, including those located at the Melbourne Facility.
- (d.) All inventory wherever located, including raw materials, work-in-process, finished goods, goods in transit, spare parts and packaging materials owned by Waterlogic or any of its Subsidiaries relating to any of the Products or relating to the Divestment Business.

(2.) The following **main intangible assets**:

- (a.) All Billi brand trademarks, as follows:

<i>Trademark</i>	<i>Entity</i>	<i>Trademark Number</i>
Billi	Billi R&D Pty Ltd	3270085
Billi Logo		1067895
Billi		1836837
Billi Evo		1887252
Billi		6504302
Billi		2017072637
Billi		286353
Alpine		1324774
Quadra Plus		7021421
Billi logo		1836832
Billi		17532938
Billi		304332609
Billi		40201722523
Billi logo		3272976
Billi Home		1368029

- (b.) All Billi patents, as follows:

<i>Patent</i>	<i>Entity</i>	<i>Status</i>	<i>Application Number</i>
Energy Saving System for Producing Cooled and Heated Liquid	Billi Australia Pty Ltd	Pending	2018393326
Capacitive Level Sensor Having Autocalibration Facility		Pending	2018397699
Variable Carbonation Beverage Dispensing System		Pending	2018400233
System for Monitoring Gas Level in a Gas Storage Cylinder		Pending	2019226626

(c.) All Billi domains¹, as follows:

- (i.) www.billi.com.au;
- (ii.) www.billievo.com;
- (iii.) www.billievo.com.au;
- (iv.) www.billiglobal.com;
- (v.) www.billi-global.com;
- (vi.) www.billihome.com;
- (vii.) www.billihome.net;
- (viii.) www.billi-uk.com;
- (ix.) www.billi.co.uk; and
- (x.) <https://billiuk.myshopify.com/>.

(3.) **Leases.** In Australia, the following leases will be transferred to the Proposed Purchaser:

¹ In addition, a number of non-Billi domain names are also being divested in New Zealand (including merquip.co.nz).

(a.) Billi manufacturing facility:

Address	42-50 Lucknow Crescent, Thomastown VIC 3074
Leased Area	42-50 Lucknow Crescent, Thomastown, Victoria 3074, Certificate of Title Volume 10729 Folio 423
Lessor	Aqueduct Superannuation Fund Pty Ltd ACN 124 661 169 as trustee for the Aqueduct Superannuation Fund of 21 Old Aqueduct Road, Diamond Creek, Victoria
Expiry Date	1 July 2025
Options to Renew	One further term of 5 years
Onsite Assets	All property, plant and equipment, including assembly lines necessary for manufacturing Billi products.

(b.) Waterlogic service centres (at the option of the Proposed Purchaser):

<i>Details</i>	<i>Sydney</i>	<i>Melbourne</i>	<i>Brisbane</i>	<i>Adelaide</i>	<i>Perth</i>
Address	15/167 Prospect Highway, Seven Hills, Sydney NSW 2147	54 Lucknow Crescent, Thomastown, Melbourne VIC 3074	Unit 3, 218 Fison Avenue W, Eagle Farm, Brisbane QLD 4009	23 Drayton Street, Bowden, Adelaide, SA 5007	Unit 3, 115 Belmont Avenue, Perth WA 6104
Leased Area	Unit 15, 167 Prospect Highway, Seven Hills being part of the land in certificate of title folio identifier 101/747482	54 Lucknow Crescent, Thomastown, 3074 – Certificate of Title Volume 11109 Folio 271	Lot 1211 on Crown Plan SL 12155	Lot 3 in Primary Community Plan 21302	Lot 2 on Survey-Strata Plan 65476

<i>Details</i>	<i>Sydney</i>	<i>Melbourne</i>	<i>Brisbane</i>	<i>Adelaide</i>	<i>Perth</i>
Lessor	176 Prospect Highway Pty Limited	Aqueduct Superannuation Fund Pty Ltd ACN 124 661 169 as trustee for the Aqueduct Superannuation Fund of 21 Old Aqueduct Road, Diamond Creek, Victoria	Newcombes Holdings No 2 Pty Ltd ACN 161 406 391 as Trustee under Instrument 713183190	Advanced Building Group Pty Ltd	Bondall Investments Pty Ltd
Expiry Date	30 November 2022	1 July 2023	31 Jan 2025	31 March 2023	30 April 2023
Options to Renew	One further term of 5 years	One further term of 3 years	One further term of 5 years	One further term of 5 years	One further term of 3 years
Onsite Assets	All property and equipment located on-site which is required to operate the Divestiture Business at the service centre.				

(4.) Firewall Tower.

- (a.) The Parties will, at the option of the Proposed Purchaser and for a negotiated term, manufacture and supply the Firewall Tower on an exclusive OEM basis to the Proposed Purchaser. The Parties (or a related entity) will also supply spare parts to support servicing of Firewall Tower units.
- (b.) As a related matter, the Parties (or a related entity) will also license the Firewall brand to the Proposed Purchaser to allow it to sell the Firewall Tower using the current branding.

(5.) Other assets. As part of the Divestment Business, the Parties will transfer:

- (a.) All advertising, marketing, sales and promotional materials primarily related to, or required for the ownership and operation of, the Divestiture Business and located within Australia;
- (b.) Any equipment, personal computers, vehicles and other tangible assets used primarily in relation to, or required for the ownership and operation of the Divestiture Business;
- (c.) All business cash and all bank accounts held by the Purchased Entities, all third-party insurance policies, transferrable guaranties, indemnities and similar rights, as well as the right to refunds and rebates; and

- (d.) Claims, defences, rights of offset or counterclaim to the extent primarily related to the Divestment Business.
- (6.) **Permits.** All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency and related documentation and used primarily in relation to, or required for the ownership and operation of, or required to facilitate the operation of, the Divestment Business.
- (7.) **Personnel:** in line with applicable employment laws, contractual provisions and other relevant legislation, all personnel who contribute to the current operations of the Divestment Business and who are necessary to ensure the viability and competitiveness of the Divestment Business (as outlined in **APPENDIX 1:** below).
- (8.) **Records.** The Parties will transfer to the Proposed Purchaser:
 - (a.) Copies of all customer and vendor lists, and business, financial and legal records, books, documents, literature, files, information and materials primarily related to, or required for the ownership and operation of, the Divestment Business, that are in possession of control of the Parties and its Subsidiaries.
 - (b.) Copies of all records of customers (current and historical), price lists, sales pipeline, catalogues and mailing lists which are primarily in relation to, or required for the ownership and operation of the Divestment Business, that are in possession of control of the Parties and its Subsidiaries.
- (9.) **Supply and Distribution:**
 - (a.) The Parties will use its best efforts to transfer to the Proposed Purchaser all Dedicated Contracts, sales orders, purchase orders, instruments and other commitments, obligations and arrangements primarily related to, or required for the ownership and operation of, the Divestment Business, other than the Excluded Assets listed in Schedule 3;
 - (b.) In the event that, despite the Parties' best endeavours pursuant to paragraph (a) above, customers with Dedicated Contracts which include change of control provisions refuse to consent to the change of control, the Parties will transfer the economic benefit of such contracts to the Proposed Purchaser and continue to invoice such customers, while the Proposed Purchaser will continue to provide the MFT and perform all related maintenance for the remainder of the relevant contracts. The Parties shall inform the customer that its commercial relationship is with the Proposed Purchaser going forward, notwithstanding the billing modalities.
 - (c.) In relation to UK customer contracts for the rental or maintenance of Billi-branded MFT units, which are not Dedicated to the Divestment Business but are part of a wider arrangement with a UK customer which also covers other products in addition to Billi-branded MFT, the Parties will use their best

endeavours to transfer to the Divestment Business the portion of such contracts which relates to Billi-branded MFT.

- (d.) In the event that, despite the Parties' best endeavours pursuant to paragraph (c) above, UK customers do not consent to the transfer of the portion of their contracts which relates to Billi-branded MFT, the Parties will transfer the economic benefit of such contracts to the Proposed Purchaser and continue to invoice such UK customers, while the Proposed Purchaser will continue to provide the MFT and perform all related maintenance for the remainder of the relevant contracts. The Parties shall inform the UK customer that its commercial relationship is with the Proposed Purchaser going forward, notwithstanding the billing modalities.
- (10.) **Transitional Services Agreements (TSAs).** The Parties will grant the Proposed Purchaser (at their option) TSAs in relation to the following for a period not exceeding [X] (or any such longer period as agreed between the Parties and approved in writing by the CMA).
- (a.) **Information Technology (IT) & Enterprise Resource Planning Systems (ERP).** IT and ERP systems will need to be separated out. A TSA will be entered into between the Parties and the Proposed Purchaser to allow for the separation of IT and any other back-office software functions.
- (b.) **Distribution Facilities.** In the UK, the Parties will (at the Proposed Purchaser's option) grant a TSA to the Proposed Purchaser for temporary access to Waterlogic's Gateshead Service Centre (to act as the Billi UK central distribution centre), three service centres and the Wolverhampton office premises. The Proposed Purchaser can then opt to transfer this function to a third-party provider or use their own facilities.
- (c.) **Back-Office Functions.** The Parties expect the Proposed Purchaser to be able to rapidly use its own back-office capabilities to integrate the Divestment Business. Nonetheless, at the option of the Proposed Purchaser, the Parties will include a TSA covering back-office functions (e.g. managing Waterlogic's IT network and providing corporate services such as HR / payroll and financial services) in the Divestment Business to enable their successful transfer to the Proposed Purchaser. [X].
- (d.) **Domains.** The Parties will transfer the global Billi brand and other Billi-owned or licensed intellectual property (including relevant patents, trademarks, domain names, and manufacturing technology) and the Dedicated Billi domains as part of the Divestiture Business. As regards the non-Dedicated IP, the Parties will retain the Waterlogic domain but grant the Proposed Purchaser a TSA to divert traffic (including incoming sales enquiries) in respect of Billi-branded MFT.
- (e.) **R&D.** There is one Billi product, [X], being jointly developed by members of the Billi business and Waterlogic's R&D function located in China. Waterlogic expects this product to be technically completed by the end of 2022, with all of

the intellectual property in [X] then being held by the Billi business. For the avoidance of doubt, it will therefore form part of the Divestment Business. At the option of the Proposed Purchaser, the Parties will enter into a TSA with the Proposed Purchaser pursuant to which the Waterlogic R&D team will provide the support necessary to the Proposed Purchaser until the product is completed and launched.

- (f.) **Waterlogic service centres.** In Australia, a further TSA will be offered to the Proposed Purchaser in relation to Waterlogic service centres. It is intended that the TSA will provide for co-location at these sites between the Divestment Business and the Parties' Businesses, and includes ensuring the provision of internet services and access to mechanical lifting equipment for the Divestment Business.
- (11.) If there are any assets, property, claims, interest or personnel which are not covered by Schedule 2 but which are both used in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, those assets or adequate substitutes will be offered to the Proposed Purchaser at no additional cost.

SCHEDULE 3: EXCLUDED ASSETS

- (1.) The Divestment Business shall not include the following Excluded Assets:
 - (a.) Assets which do not relate to the Billi business, including customer contracts for the rental or maintenance of non-Billi branded MFT units.
 - (b.) The global Firewall brand, technology and associated patents, trademarks and other intellectual property.
 - (c.) Books and records required to be retained pursuant to any law provided that the Proposed Purchaser shall on request receive a copy of the same.
 - (d.) Any other asset or contract that is primarily in respect of the Parties retained business(es) and which is not necessary for the viability and competitiveness of the Divestment Business.
- (2.) For the avoidance of doubt, the Divestment Business shall also not include the contracts for the rental of MFT units relating to customers in Australia.

APPENDIX 1: UK-BASED DIVESTMENT BUSINESS PERSONNEL

In addition to the UK-based personnel set out in the table below, it is anticipated that [X] will transfer across to the Divestment Business, alongside other additional staff at the option of the Proposed Purchaser, which it considers necessary for the operation of the Divestment Business.

<i>Department</i>	<i>Title</i>	<i>Name</i>
Management (Department)	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
Sales	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
	[X]	[X]
Customer Services	[X]	[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]
Planning	[X]	[X]
IT	[X]	[X]
Finance	[X]	[X]

<i>Department</i>	<i>Title</i>	<i>Name</i>
Field Operations	[X]	[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]
		[X]

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