

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

Decision that undertakings might be accepted

ME/6992/22

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality

Introduction

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**) (the **Merger**). BDT and Firewall are together referred to as the '**Parties**'.
2. On 18 August 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice, pursuant to section 34ZA(1)(b) of the Act, to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 25 August 2022, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. Culligan (mainly through its Zip brand) and Waterlogic (through its Billi brand) both supply multifunctional taps (**MFT**) to non-residential ('out of home') (**OOH**) customers in the UK. The SLC Decision found 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. To address this SLC, the Parties have offered to give undertakings in lieu of a reference (**UIL**) to divest the entirety of Waterlogic's Billi-branded MFT business globally (the **Divestment Package**) (the **Proposed Undertakings**).
8. The Divestment Package comprises Billi's manufacturing business (located in Australia) and Waterlogic's Billi commercialisation business (ie the business supplying customers) in the UK.¹ It includes:
 - a) Billi's dedicated R&D capabilities and manufacturing site, including for spare parts (located in Australia);
 - b) the global Billi brand and all associated intellectual property rights (**IPR**), know-how, and dedicated domains;
 - c) senior management including the current Billi CEO, CFO, Head of Manufacturing and R&D, and Head of International Sales (all located in Australia);

¹ The Divestment Package only includes Waterlogic's commercialisation of Billi MFT (and not third party MFT supplied by Waterlogic to UK customers). Billi comprises almost all (98%) by 2021 revenue) of MFT supplied by Waterlogic in the UK. The Divestment Package does not include Waterlogic's commercialisation of other (non-MFT) water dispensers.

- d) a dedicated local manager in the UK, and existing sales, customer experience, and field engineer teams located in the UK, together with other necessary business operations personnel;
 - e) customer contracts (including maintenance and rental contracts for Billi-branded MFT units²) or sales orders and sales pipeline; and
 - f) transitional service arrangements (as required by the purchaser) including for the temporary distribution of Billi MFT by Waterlogic in the UK, access to warehousing facilities and back-office functions.
9. The Parties have submitted two alternative Proposed Undertakings: one in which the Parties have offered to enter into a purchase agreement with a buyer of the Divestment Package approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**) (the **Alternative Proposed Undertakings**); and one without an Upfront Buyer Condition (the **Parties' Preferred Proposed Undertakings**).

The CMA's provisional views

10. When considering whether to accept UILs, the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any resulting adverse effects.³ The CMA considers that UILs are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁴
11. The CMA believes that the Alternative Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they would remove the overlap between the Parties in the supply of MFTs to OOH customers in the UK. As such, the Alternative Proposed Undertakings may result in replacing the competitive constraint provided by Waterlogic that would otherwise be lost following the Merger.
12. The CMA currently believes that the Alternative Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Alternative Proposed Undertakings may be capable of ready implementation, as the Divestment Package comprises the entirety of Waterlogic's Billi MFT business, including all

² Under the Proposed Undertakings, the Parties will use their best efforts to transfer all dedicated Billi contracts (ie where the contract relates solely to Billi MFT) and, for broader Waterlogic contracts for the rental or maintenance of Billi MFT alongside other products and services, the portion of such contracts that relates to Billi MFT.

³ Section 73(3) of the Act, and [Mergers remedies](#), December 2018 (**CMA87**), paragraph 3.30.

⁴ [CMA87](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

existing customers of Billi MFT, the full sales pipeline for Billi MFT, all associated IPR, and substantially all staff involved in the supply (including the manufacture and commercialisation) of Billi MFT in the UK. While the Divestment Package will need to be a 'carve out' of the other Waterlogic business in the UK, the information currently available suggests that the implementation risks involved in this carve out are not material and that the shared assets represent a relatively small part of the Divestment Package.

13. The Upfront Buyer Condition means that the CMA will only accept the Alternative Proposed Undertakings after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Alternative Proposed Undertakings. At Phase 1, the CMA will generally require an upfront buyer unless it considers that there are reasonable grounds for not doing so and, in particular, where the risk profile of the remedy does not require it.⁵ The CMA currently considers that, in this case, an Upfront Buyer Condition is necessary to mitigate the composition risk (and related purchaser risk) associated with the necessary carve-out of certain assets included in the Divestment Package.⁶
14. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Alternative Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
15. The CMA's decision on whether ultimately to accept the Alternative Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Alternative Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Alternative Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible such that the competitive constraint provided by Waterlogic absent the Merger is replaced to a sufficient extent.

Consultation process

16. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.⁷

Decision

17. The CMA therefore considers that there are reasonable grounds for believing that the Alternative Proposed Undertakings offered by the Parties, or a modified version

⁵ [CMA87](#), paragraph 5.29.

⁶ [CMA87](#), paragraphs 5.14 and 5.28 to 5.32.

⁷ [CMA2](#), paragraph 8.29.

of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 28 October 2022 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 23 December 2022 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Sorcha O'Carroll
Senior Director, Mergers
Competition and Markets Authority
2 September 2022