

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

## NOTICE UNDER PARAGRAPH 2(1) OF SCHEDULE 10 TO THE ENTERPRISE ACT 2002 (THE ACT) – CONSULTATION ON PROPOSED UNDERTAKINGS IN LIEU OF REFERENCE PURSUANT TO SECTION 73 OF THE ACT

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**, and for statements referring to the future, as the **Merged Entity**.
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**). The text of the SLC Decision is available on the CMA webpage.<sup>1</sup>

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<sup>1</sup> See [Culligan / Waterlogic merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/cma-opens-consultation-on-anticipated-acquisition-by-osmosis-buyer-limited-of-firewall-holding-s-a-r-l).

3. On 25 August 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 2 September 2022, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, 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 Parties' offer (the **UIL Provisional Acceptance Decision**).

## THE UNDERTAKINGS OFFERED

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of multifunctional taps (**MFT**) to non-residential ('out of home') (**OOH**) customers in the UK.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, the Parties have offered undertakings to divest the entirety of Waterlogic's Billi-branded MFT business globally (the **Divestment Package**). The text of the undertakings is available on the CMA webpage (the **Proposed Undertakings**).<sup>2</sup>
7. 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.<sup>3</sup> 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);
  - (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;<sup>4</sup>

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<sup>2</sup> See [Culligan / Waterlogic merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/culligan-waterlogic-merger-inquiry).

<sup>3</sup> 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 (>90% 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.

<sup>4</sup> Under the Proposed Undertakings, the Parties will use all reasonable endeavours to ensure the transfer of all staff with executive or managerial responsibility and/or whose performance affects the viability of the Divestment Package

- (e) customer contracts (including maintenance and rental contracts for Billi-branded MFT units<sup>5</sup>) or sales orders and sales pipeline; and
  - (f) transitional service arrangements (as required by the purchaser) including access to warehousing facilities and associated services (including assistance with customer distribution), and back-office functions.
8. The Parties have also offered to enter into an agreement for the sale and purchase of the Divestment Package with an upfront buyer before the CMA finally accepts the Proposed Undertakings (the **Upfront Buyer Condition**). The Parties have proposed Strix Group plc (**Strix**) as the upfront buyer. On 5 October 2022, the Parties and Strix entered into an agreement for the sale of the Divestment Package (the **Agreement**). The Agreement is conditional on the approval of Strix as the purchaser of the Divestment Package and approval of the terms and conditions of the Agreement by the CMA, Australian Competition and Consumer Commission (**ACCC**), and the New Zealand Commerce Commission (**NZCC**) and on completion of the Merger.
9. The Parties offered certain transitional service arrangements (**TSAs**) to ensure the continuity of the operations of the Divestment Package immediately post-divestiture. This includes temporary access to distribution facilities, back-office functions, dedicated domains, research and development, and service centres.

## CMA ASSESSMENT

10. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>6</sup> This is because the Proposed Undertakings would address the SLC identified in the SLC Decision by removing the overlap between the Parties in the supply of MFT to OOH customers in the UK. As such, the divestiture of the Divestment Package would restore the competitive constraint provided by Waterlogic on Culligan (and vice versa) that would otherwise be lost following the Merger.
11. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the divestment package comprises the entirety of Waterlogic's Billi MFT business, including all existing customers of Billi MFT, the full sales pipeline for Billi MFT, all associated IPR, and substantially all staff involved in

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<sup>5</sup> 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.

<sup>6</sup> [Merger remedies](#), 13 December 2018 (**CMA87**), paragraph 3.28.

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.

12. The Upfront Buyer Condition means that the CMA would accept the Proposed Undertakings only after the Parties have entered into an agreement with a proposed purchaser that the CMA considers to be suitable. 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. The evidence available to the CMA indicates that Strix has sufficient resources and expertise to provide the necessary management support to enable the Divestment Package to quickly compete with the Merged Entity as a standalone business.

### **Suitability of the proposed purchaser**

13. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
  - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;
  - (b) the proposed purchaser is independent from and has no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the Merged Entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance);
  - (c) the proposed purchaser has sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. The proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (d) the proposed purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant markets, and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with and other competitors in the relevant market; and

(e) the acquisition by the proposed purchaser does not create a realistic prospect of further competition or regulatory concerns.<sup>7</sup>

14. Subject to responses to this consultation, and having regard in particular to the criteria set out in paragraph 13, the CMA currently considers Strix to be a suitable purchaser of the Divestment Package for the following reasons:

- (a) The acquisition by Strix would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable. This is because it would allow the Divestment Package to compete in the supply of MFT to OOH customers in the UK as an independent entity, fully replacing the competition that previously existed between Waterlogic and Culligan.
- (b) The evidence available to the CMA indicates that Strix (and any related entity) is independent and does not appear to have any significant connection to the Parties or to other companies active in the supply of MFT to OOH customers in the UK that may compromise its incentives to compete against the Merged Entity if it were to acquire the Divestment Package.
- (c) The evidence available to the CMA indicates that Strix has the appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, and incentive needed to maintain and develop the Divestment Package as a viable and competitive business in competition with the Merged Entity and other competitors on an ongoing basis.
  - (i). In relation to its relevant managerial, operational and technical expertise, Strix specialises in manufacturing systems for controlling water temperature and filtering water, both of which are core components of MFT. Some of these systems are sold to OEMs (eg multinational kettle manufacturers), while others are incorporated into Strix's portfolio of consumer products, such as the 'Aurora Instant Hot and Cold Filtered Water Dispenser'. Strix has submitted to the CMA that its patented technology in these systems, which it continues to develop, can be incorporated within the Divestment Package's portfolio of MFT, and can contribute to their innovation going forwards. Strix has long-standing commercial relationships with multinational OEMs and major retailers, and it provides its customers with a range of support services. Lastly, Strix has recent experience of successfully integrating acquired businesses, such as LAICA S.p.A (October 2020) and certain assets of HaloSource Corporation (March 2019).

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<sup>7</sup> [CMA87](#), paragraphs 5.20 to 5.27.

(ii). In relation to its financial resources, Strix had a turnover of £119.4 million for the year ended 31 December 2021. Its operating profit for the same period was £33.7 million. As at 31 December 2021, Strix had approximately £30 million of facility headroom and a net debt to EBITDA ratio of 1.26x. The information available to the CMA, at this stage, suggests that Strix has a credible plan to repay the loan to finance its acquisition of the Divestment Package, and, concurrently, to invest in developing the competitiveness of the Divestment Package.

(d) The evidence available to the CMA indicates that Strix has an appropriate business plan for competing in the supply of MFT to OOH customers in the UK. The business plans shared by the Strix with the CMA indicate that Strix has the necessary understanding of the MFT industry and the OOH customer base and that it will have the necessary capability to continue to offer customers the services and support they require. According to Strix's business plan, it is committed to operating the Divestment Package and to grow the acquired MFT business as a viable competitor to the Merged Entity in the supply of MFT to OOH customers in the UK.

(e) The evidence available to the CMA indicates that the acquisition of the Divestment Package by Strix will not create a realistic prospect of further competition concerns, as Strix does not supply MFT to OOH customers in the UK and is unconnected to any companies which do.

15. Therefore, subject to responses to this consultation, the CMA currently considers Strix to be a suitable purchaser of the Divestment Package.

### **Proposed decision and next steps**

16. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Package by Strix are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.

17. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web page.<sup>8</sup>

18. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that

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<sup>8</sup> See [Culligan / Waterlogic merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/culligan-waterlogic-merger-inquiry).

any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>9</sup>

19. Representations should be made in writing to the CMA, preferably by email, and be addressed to:

Georgia Zele

Email: [georgia.zele@cma.gov.uk](mailto:georgia.zele@cma.gov.uk)

and

Darren Gysi

Email: [darren.gysi@cma.gov.uk](mailto:darren.gysi@cma.gov.uk)

**Deadline for comments: 21 October 2022**

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<sup>9</sup> Under paragraph 2(4) of Schedule 10 to the Act.