



23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Our ref: IM-71709
Contact officer: Sophie Musker / Nissa Burns
Contact phone: (03) 9658 6408 / (03) 9910 9558

tel: (02) 6243 1368
mergers@acc.gov.au

www.accc.gov.au

4 March 2022

Dear Interested Party

Request for submissions: Culligan Group's proposed acquisition of Waterlogic

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Culligan Group's (which includes the Zip brand) proposed acquisition of Waterlogic (which includes the Billi and Waterlogic Australia brands) (the **proposed acquisition**).¹

Culligan Group and Waterlogic overlap in the supply of water dispensing products including multi function taps, wall mounted boilers, bottle free coolers, bubblers and other water dispensing solutions.

As part of the proposed acquisition, Osmosis Buyer Limited (the owner of Culligan Group) proposes to offer a court enforceable undertaking to the ACCC to divest the Billi business (the **proposed divestment undertaking**).

Further detail regarding the proposed acquisition and the proposed divestment undertaking is at **Attachment A**.

The ACCC's investigation is focused on the impact on competition but will also concurrently consider the proposed divestment undertaking. In particular, we are seeking your views on the effects in Australia including:

- how closely Culligan Group and Waterlogic compete in the provision of water dispensing products
- whether there are sufficient alternative suppliers to maintain competition
- the impact on price, quality or service levels if the proposed acquisition proceeds
- the proposal to divest Billi.

¹ Osmosis Buyer Limited's which controls the entities that operate the Culligan Group propose to acquire Firewall Holding S.A.R.L which is the majority shareholder in Waterlogic Group Holdings Limited.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed merger is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits mergers and acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **21 March 2022**. Responses may be emailed to mergers@acc.gov.au with the title: *Submission re: Culligan/Waterlogic - attention Sophie Musker / Nissa Burns*.

Please note the ACCC has not yet formed a view as to the nature and extent of any competition concerns with respect to the proposed acquisition, or whether they are capable of being addressed by Osmosis Buyer Limited's proposal to divest the Billi business. The market consultation process should not be taken as an indication that the ACCC will accept the proposed undertaking.

If you would like to arrange a time to discuss the matter with ACCC staff, or have any questions about this letter, please contact Sophie Musker on (03) 9658 6408 or Nissa Burns on (03) 9910 9558.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations

Attachment A

The proposed acquisition

Osmosis Buyer Limited (**Osmosis**), the owner of Culligan Group, intends to acquire 100% of the shares in Firewall, the majority shareholder in Waterlogic.

Culligan Group

Osmosis controls entities that operate the Culligan Group, an international provider of water treatment solutions. In Australia this includes Zip Industries Pty Ltd and Zip Heaters (Aust) Pty Ltd (together **Zip**).

In Australia, Zip supplies and services:

- multi function taps (**MFTs**)
- wall mounted boilers (also known as on-wall boilers)
- bubblers.
- bottle free coolers (**BFCs**) and
- tap and refillable bottle solutions via its Vestal brand.

Zip also manufactures MFTs, wall mounted boilers and bubblers.

Waterlogic

Firewall is the majority shareholder of Waterlogic Group Holdings Limited (**Waterlogic**).

Waterlogic is an international provider of purified drinking water dispensers. Waterlogic manufactures water products (MFTs and BFCs) in China, the United States and Australia (the latter through its Billi brand).

In Australia, Waterlogic manufactures and supplies water products and services through Billi Australia Pty Ltd (**Billi**) and Waterlogic Australia Pty Ltd (**Waterlogic Australia**).

Billi manufactures, supplies and services Billi-branded MFTs.

Waterlogic Australia primarily rents and services:

- MFTs
- BFCs
- tap and refillable bottle solutions via its Purezza brand
- wall mounted boilers and
- bubblers.

The proposed divestment undertaking

To pre-emptively address any potential competition concerns that may arise from the proposed acquisition, Osmosis proposes to offer a court enforceable undertaking to divest the Billi business to a purchaser approved by the ACCC (**Approved Purchaser**). The divestment proposal will include:

- the relevant Australian entities which form part of Billi,

- the Billi manufacturing plant in Thomastown, Melbourne, including all property, plant and equipment, including assembly lines, necessary for manufacturing Billi products,
- at the option of the purchaser, any or all of the five Waterlogic Australia leased service centres located in Sydney, Melbourne, Brisbane, Adelaide and Perth, including property and equipment located on site necessary for the operation of Billi at the service centre,
- at the option of the purchaser, the transfer of relevant employees,
- the global Billi brand and other Billi owned or licensed intellectual property,
- all assets used to supply aftersales services and spare parts,
- all existing customer contracts, sales orders and purchase orders entered into by Billi,
- all material supply and distribution contracts entered into by Billi, and
- all current and historical customer records and other marketing materials used by Billi,

(the **Divestment Business**).

The divestment proposal requires Osmosis to appoint an ACCC-approved independent manager of Billi during the divestiture period (from the date of the completion of the acquisition to the date of completion of the divestiture) and an ACCC-approved independent auditor to monitor Osmosis' compliance with the court enforceable undertaking.

Further, at the option of the purchaser, Osmosis must supply the Approved Purchaser a transitional supply agreement for any goods or services that are required by the Approved Purchaser to establish itself as a competitor for the supply of MFTs in Australia.

For a more detailed description of the assets to be divested, please refer to **Attachment C**.

Attachment B

1. Provide a brief description of your business or organisation and explain your interest in the proposed acquisition, including any commercial relationship(s) with Zip, Billi or Waterlogic Australia.
2. For customers of Zip, Billi or Waterlogic Australia – details of your water dispensing purchases and reasons for using that brand.
3. For suppliers to Zip, Billi or Waterlogic Australia – what products do you supply to these entities and what other businesses do you supply these products to?
4. How competitive is the manufacture, supply (sale and rental) and servicing of:
 - a. MFTs
 - b. wall mounted boilers
 - c. BFCs
 - d. bubblers
 - e. other water dispensing solutions, such as those provided by Vestal and Purezza.
5. Who are the main competitors for these products, and how do they compare based on factors such as price, service quality and market share?
6. How closely does Zip compete with Billi and Waterlogic Australia for the manufacture, supply and servicing of these products (noting the proposal to divest Billi)?
7. What is the cost and time for customers to switch between brands and types of water dispensing products?
8. To what extent are the products listed in (4) substitutable? For example, do you consider MFTs substitutable with BFCs and/or bubblers?
9. To what extent are these products substitutable with alternative water dispensing products? For example, do you consider bottled water and/or bottled water coolers to be substitutes of any of the products listed above?
10. How easy or difficult it is for new entrants to enter and expand in the manufacture, supply and servicing of the previously mentioned products?
11. Do you have any concerns about the likely competition effects of the proposed acquisition? Please include any reasons for this concern.

The remedy proposal (divestment of Billi)

12. Is the remedy proposal sufficient to replace any loss of competition resulting from the proposed acquisition? Why / why not.
13. Is the proposed asset package likely to attract a suitable purchaser? To what extent would the purchaser of Billi need experience in Australia in order to be a viable, effective and long-term competitor?
14. Would the divestment of Billi fully address any concerns you have in relation to the proposed acquisition?

Attachment C

<p>Divestment Business</p>	<p>Billi comprises the entities set out in the table below, and as accompanied by the assets, licences, agreements and other tangible and intangible property listed in Attachment C, to the extent required to facilitate the operation of the Divestment Business in Australia.</p> <table border="1" data-bbox="592 389 1265 1084"> <thead> <tr> <th style="background-color: #0056b3; color: white;">Entity</th> <th style="background-color: #0056b3; color: white;">Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="592 465 788 757"> <p>Billi Australia Pty Ltd ACN 624 854 829</p> </td> <td data-bbox="791 465 1265 757"> <p>This is an Australian entity which supplies all Billi products, including but not limited to multifunctional taps, and bottle free coolers, whether for residential or commercial customers.</p> <p>This entity enters into recurring service contracts with consumers.</p> </td> </tr> <tr> <td data-bbox="592 761 788 1084"> <p>Billi R&D Pty Ltd ACN 136 662 014</p> <p>Billi Financial Services Pty Ltd ACN 613 926 328</p> </td> <td data-bbox="791 761 1265 1084"> <p>These are other Australian entities which formed part of Waterlogic's acquisition of Billi in 2018.</p> </td> </tr> </tbody> </table>	Entity	Description	<p>Billi Australia Pty Ltd ACN 624 854 829</p>	<p>This is an Australian entity which supplies all Billi products, including but not limited to multifunctional taps, and bottle free coolers, whether for residential or commercial customers.</p> <p>This entity enters into recurring service contracts with consumers.</p>	<p>Billi R&D Pty Ltd ACN 136 662 014</p> <p>Billi Financial Services Pty Ltd ACN 613 926 328</p>	<p>These are other Australian entities which formed part of Waterlogic's acquisition of Billi in 2018.</p>
Entity	Description						
<p>Billi Australia Pty Ltd ACN 624 854 829</p>	<p>This is an Australian entity which supplies all Billi products, including but not limited to multifunctional taps, and bottle free coolers, whether for residential or commercial customers.</p> <p>This entity enters into recurring service contracts with consumers.</p>						
<p>Billi R&D Pty Ltd ACN 136 662 014</p> <p>Billi Financial Services Pty Ltd ACN 613 926 328</p>	<p>These are other Australian entities which formed part of Waterlogic's acquisition of Billi in 2018.</p>						
<p>Intellectual property</p>	<p>Billi brand trademarks, Australian patents and domain names.</p> <p>The books, records and files relating to the prosecution and maintenance of the Australian trademarks and patents and domain names.</p>						
<p>Manufacturing agreement and supply of spare parts</p>	<p>At the option of the Approved Purchaser, for a negotiated term, manufacture and supply the Firewall Tower on an exclusive original equipment manufacturer basis to the Approved Purchaser for sale to customers based in Australia and New Zealand. Osmosis (or a related entity) will also supply spare parts to support servicing of Firewall Tower units. As a related matter, Osmosis (or a related entity) will also license the Firewall brand to the Approved Purchaser to allow it to sell the Firewall Tower using the current branding in Australia and New Zealand.</p>						
<p>Property, plant and equipment</p>	<p>Billi manufacturing facility</p> <p>Billi manufacturing facility located at 42-50 Lucknow Crescent, Thomastown VIC 3074.</p> <p>Includes all property, plant and equipment, including assembly lines necessary for manufacturing Billi products.</p> <p>The Billi manufacturing facility lease expires on 1 July 2025, with an option for the Approved Purchaser to renew the lease for one further term of 5 years.</p>						

	<p>Waterlogic service centres</p> <p>At the option of the purchaser:</p> <ul style="list-style-type: none"> • Sydney service centre located at 15/167 Prospect Highway, Seven Hills, Sydney NSW 2147 • Melbourne service centre located at 42-50 Lucknow Crescent, Thomastown, Melbourne VIC 3074 • Brisbane service centre located at Unit 3, 218 Fison Avenue W, Eagle Farm, Brisbane QLD 4009 • Adelaide service centre located at 23 Drayton Street, Bowden, Adelaide, SA 5007 • Perth service centre located at Unit 3, 115 Belmont Avenue, Perth WA 6104 <p>Includes all property and equipment located on-site which is required to operate the Divestment Business at the service centre.</p> <p>Each of the listed service centres are under lease with an option for the Approved Purchaser to renew the lease for a further term (ranging from 3 – 5 years).</p> <p>As part of the proposed divestment, the Approved Purchaser can enter into a Transitional Supply Agreement with Osmosis for co-location at any or all of these sites.</p>
<p>Permits</p>	<p>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.</p>
<p>Products under development</p>	<p>All Billi products under development including products which are being jointly developed with Waterlogic.</p> <p>At the option of the Approved Purchaser, transitional support from Waterlogic to complete the development of any jointly developed product(s) in the event that those product(s) are not commercialised prior to the divestment of the Divestment Business.</p>
<p>Inventory</p>	<p>Inventory of the Divestment Business (including spare parts) in Australia that exists as at the date of completion of the divestiture and is not already sold to a third party will be transferred to the Approved Purchaser.</p>
<p>Employees</p>	<p>Transfer of:</p> <ul style="list-style-type: none"> • all employees engaged in the Billi business in Australia, who are wholly or primarily engaged in, or necessary for, the operation of the Divestment Business and who consent to the transfer of their employment; and • employees in Australia who are employed by Waterlogic but are predominantly involved in work related to the Billi business in Australia or necessary for the operation of

	<p>the Divestment Business, and who consent to the transfer of their employment, subject to agreement by the Approved Purchaser.</p>
<p>Other assets</p>	<ul style="list-style-type: none"> • All advertising, marketing, sales and promotional materials primarily related to, or required for the ownership and operation of, the Divestment Business and located within Australia; and • Any equipment, personal computers, vehicles and other tangible assets used primarily in relation to, or required for, the ownership and operation of the Divestment Business.
<p>Business records</p>	<p>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.</p>
<p>Customer records</p>	<p>All records of customers (current and historical), price lists, catalogues and mailing lists which are primarily in relation to, or required for, the ownership and operation of the Divestment Business in Australia.</p>
<p>Material supply and distribution contracts</p>	<p>All material 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.</p> <p>For the avoidance of doubt, this includes:</p> <ul style="list-style-type: none"> • all distribution agreements between Billi and third-party distributors of Billi products; and • contracts for the service of products sold by Billi in Australia.