
Completed acquisition by PHS of Connect Water Systems (UK) Limited and related companies and Filterpure Limited

ME/5285/11 and ME/5270/11

The OFT's decision on reference under section 22(1) given on 10 February 2012. Full text of decision published 6 March 2012.

Please note that the square brackets indicate 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.

PARTIES

1. **Personnel Hygiene Services Limited** and its parent company PHS Group plc (jointly, '**PHS**') provide a range of workplace services in the UK, Spain and the Republic of Ireland, including the supply of water coolers and related products (such as disposable cups, sticks and accessories) through its division PHS Waterlogic.
2. **Connect Water Systems (UK) Limited** and its related companies Connect Water Systems North East Limited, Connect Water Systems (Scotland) Limited and Connect Water Systems Limited (together **Connect**) were privately owned companies supplying water coolers and related products in the UK. In the financial year ending 30 April 2011, Connect's UK revenue was £[] million.
3. **Filterpure Limited (Filterpure)** was a privately owned company supplying water coolers, related products and accessories in the UK. In the financial year ending 30 April 2011, Filterpure's UK revenue was £[] million.

TRANSACTIONS

4. On 29 June 2011 PHS acquired Connect (the **Connect Transaction**) and on 9 September 2011 PHS acquired Filterpure (the **Filterpure Transaction**) (jointly, the **Transactions**).

JURISDICTION

5. Each of the Transactions is a separate relevant merger situation, as set out below. However, as both Transactions concern the same acquiring party, markets and administrative timetable, the OFT discusses both Transactions in this decision simultaneously.

Connect Transaction

6. As a result of the Connect Transaction, PHS and Connect ceased to be distinct. These enterprises overlap in the supply of point of use (**POU**) water coolers with a combined share of supply exceeding 25 per cent (see paragraph 21 below). The share of supply test in section 23 of the Enterprise Act 2002 (the **Act**) is met. Therefore, the OFT believes that it is or may be the case that the Connect Transaction has resulted in the creation of a relevant merger situation.
7. The Connect Transaction was not publicised by PHS or Connect. Further, the Connect Transaction was not, as far as the OFT can ascertain, mentioned in the press. The OFT launched an own-initiative merger investigation on 4 October 2011, after learning about the Transaction from PHS. Following an extension under section 25(2) of the Act, the statutory deadline is 19 February 2012. The administrative deadline is 10 February 2012.

Filterpure Transaction

8. As a result of the Filterpure Transaction, PHS and Filterpure ceased to be distinct. These enterprises overlap in the supply of POU water coolers in the UK with a combined share of supply exceeding 25 per cent (see paragraph 21 below). The share of supply test in section 23 of the Act is met. Therefore, the OFT believes that it is or may be the case that the

Filterpure Transaction has resulted in the creation of a relevant merger situation.

9. The Filterpure Transaction was not publicised by PHS or Filterpure. Further, the Filterpure Transaction was not, as far as the OFT can ascertain, mentioned in the press. The OFT launched an own-initiative merger investigation on 4 October 2011 after learning about the transaction from PHS. Following an extension under section 25(2) of the Act, the statutory deadline is 19 February 2012. The administrative deadline is 10 February 2012.

MARKET DEFINITION

10. The merged parties overlap in the supply of POU water coolers, also known as mains fed or plumbed in water coolers. POU water coolers are one of the two main categories of water coolers, the other being Bottle Water Coolers (**BWC**). Neither Connect or Filterpure supply BWC.
11. There is also an overlap between the parties in the supply of ancillary products (in particular plastic or paper cups, as well as accessories for the machines). However, these ancillary products are not discussed further in this decision as they can be purchased separately from a variety of sellers, such as supermarkets and convenience stores, thus no competition concerns arise for them.

Product market

12. The OFT considered whether the supply of POU water coolers and BWC should be considered to be distinct markets within the supply of water coolers per se.

Demand-side substitutability

13. PHS submitted that it is appropriate to consider POU water coolers and BWC together, as a reasonable description of goods. It submitted that both products are acquired by customers for exactly the same purpose and are interchangeable. It also submitted that a press release by market research company Zenith International supported this, referring to one industry, two

solutions,¹ which was indicative of the similarity and substitutability of the two products.

14. Third party views were mixed. Some said they could only use BWC because of the unavailability of a water system to plumb a POU water cooler in to. Conversely, other third parties stated that they could only use POU water coolers because of internal health and safety policies or lack of space to store the bottles. Not all customers, however, were limited to being able to use one type of water cooler. For the customers that were unconstrained, the main driver was price.
15. The OFT considered the possibility of segmenting the relevant market into two separate markets for customers constrained to using one type of water cooler and customers that are unconstrained. However, even if this were appropriate, this distinction would lead to the analysis of both POU water coolers and the wider water cooler market, which will be carried out anyway.
16. Since the Transactions do not raise competition concerns in either the POU water coolers market or in the joint POU and BWC market, the OFT does not need to come to a conclusion as to the appropriate market definition.

Geographic market

17. The merged parties are national suppliers, although with different degrees of national presence. PHS referred to market intelligence suggesting that there are more than 400 local or regional players in the UK.² The OFT considered that there are both national-level and regional-level elements of competition in the water cooler market(s) in the UK. There are several companies operating on a national basis and a myriad of companies operating on a local or regional basis (see Table 1 below).
18. The OFT considers that by analysing the level of competition at national level, the OFT has adopted a cautious approach with respect to the regional level. This is because the level of competition at regional level benefits not only from the presence of the national players but also of the

¹ Zenith International 'Renewed Optimism in the West Europe Water Cooler Market ' Press Release 16 August 2011.

² Zenith Report on UK Water Coolers (February 2010), page 8.

additional regional competitors. Also, the merged parties are national suppliers and there are a considerable number of national suppliers which can supply all regions, given the small number of depots required to operate a national business for the supply of POU water coolers.

19. Furthermore, the distinction between national and regional competition is more important for BWC than for POU water cooler suppliers. As mentioned above, the supply of water bottles for BWC machines (and return of the empty bottles) reduces the area around a depot that can be covered by one supplier and therefore generates a difference in the size of different suppliers. In both the present cases, the merged parties overlap in the supply of POU water coolers only.
20. As the Transactions did not raise competition concerns in these areas, as set out below, the OFT did not need to conclude on the precise scope of the geographic market in this respect.

UNILATERAL EFFECTS

Shares of supply

21. PHS's estimates of the shares of supply of the merged parties and their main competitors in the supply of water coolers in the UK are set out in Table 1 below.³ Since the data did not fully reflect the estimate of indirect sales,⁴ some adjustment has been made to the merged parties' data.

³ The estimates supplied by PHS in Table 1 are based on the Zenith report for West Europe Coolers 2011.

⁴ Indirect sales, are sales where the PHS water cooler units are sold to its competitors.

Table 1: Market shares by volume

2010e No of machines, 2011 Zenith Report

Companies	BWC	POU	POU (%)	POU+BWC (%)
Eden Springs UK Ltd	[]	[]	5-10	10-20
Angel Springs Holdings Ltd	[]	[]	0-5	5-10
Aquaid Franchising	[]	[]	5-10	5-10
Culligan International (UK) Ltd	[]	[]	0-5	0-5
Cooleraid	[]	[]	0-5	0-5
Water For Work and Home	[]	[]	0-5	0-5
AG Barr	[]		-	0-5
Cool Clear Water	[]		-	0-5
Cameron Water	[]	[]	0-5	0-5
Rocwell Natural Mineral Water	[]		-	0-5
Brontë Natural Spring Water Ltd	[]	[]	0-5	0-5
Prince's Gate Spring Water	[]	[]	0-5	0-5
Aqua Express Ltd	[]		-	0-5
PHS Waterlogic	[]	[]	30-40	10-20
Greenworks Water		[]	5-10	0-5
Tana Water (UK) Ltd		[]	0-5	0-5
Connect Water Systems		[]	0-5	0-5
Freshwater Coolers		[]	0-5	0-5
Pressure Coolers	[]	[]	0-5	0-5
Horizon Drinks		[]	0-5	0-5
Pure H ₂ O Company		[]	0-5	0-5
Blue Direct		[]	0-5	0-5
WatercoolersDirect		[]	0-5	0-5
H ₂ O Cooler Rentals		[]	0-5	0-5
Filterpure		[]	0-5	0-5
Others	[]	[]	10-20	20-30
Total market	[]	[]	100%	100%

22. The merged parties' combined share for POU water coolers is considerably larger than their competitors' at [30-40] per cent and their combined market share for POU water coolers and BWC is [10-20] per cent.
23. However, the increment to PHSs share resulting from the Transactions is very low: [0-five] per cent from Connect and [0-five] per cent from Filterpure in the narrow POU water cooler market and even smaller in the wider water cooler market. Also, it is noticeable that in both the POU water cooler, and the wider BWC and POU water cooler markets, there are a number of national and a multitude of regional and local competitors. In addition, there are a number of competitors in the wider water cooler

market with comparable market shares to that of Connect and Filterpure. As set out below, there are a number of additional factors to allay any competition concerns.

Closeness of competition

24. No customer or competitor perceived the parties as close competitors. None of the customers were aware of more than two of the three merged parties, and none of them had more than one of the parties participating for the same tender.
25. It therefore appears that the merged parties were not considered particularly close competitors, even though they all supply the same product.

BARRIERS TO ENTRY

26. PHS submitted that barriers to entry in the POU water cooler industry are low. Third parties confirmed this. In particular, third parties stated that barriers to entry are particularly low for companies supplying BWC to switch to or add POU water coolers. This is because the supply of BWC needs a much more granular delivery network to operate at national level than the supply of POU, because of the need to have depots to store water bottles in the proximity of the clients. This is consistent with the evolution of the market in the last 10 years, when a number of BWC suppliers added POU water coolers to the range of products supplied. Having said this, given the lack of competition concerns, it has not been necessary for the OFT to reach a view on barriers to entry.

BUYER POWER

27. The OFT considered the existence of buyer power in the water coolers market which would in effect constrain the behaviour of PHS. PHS submitted that customers are able to switch supplier without difficulty, and the plethora of suppliers has resulted in very significant buyer power. This was reflected in third party views. They were well versed in either negotiating a contract or re-tendering a contract (on its demise), if price increases were imposed. Some customers also indicated that switching costs were low and the time needed for switching, less than six weeks,

was small. The OFT notes that all of these elements may indicate a degree of buyer power. However, given the lack of competition concerns, it has not been necessary for the OFT to reach a view on buyer power.

THIRD PARTY VIEWS

28. Third party views have been discussed above where relevant. No customers or competitors raised concerns about the Transactions

ASSESSMENT

29. The merged parties overlap in the supply of water coolers in the UK, and more specifically the supply of POU water coolers. Their combined share in the supply of water coolers was [10-20] per cent. Their combined share in the supply of POU water coolers is higher at [30-40] per cent at a national level.
30. Although the parties combined share of supply of POU water coolers is not insignificant, the increment from the Transactions is small. Also, the OFT found that the market is highly competitive, with barriers to entry appearing to be low.
31. Consequently, the OFT does not believe that it is or may be the case that the Transactions have resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

32. The Connect Transaction will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.
33. The Filterpure Transaction will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

END NOTE

1. The OFT clarifies that regarding the indirect sales referred to in paragraph 21, PHS maintained that these sales were at a different level of the market than that under review and further that the volume of such sales was, on an annual basis, significantly lower than that used by the OFT for the calculation of market share in POU. PHS therefore considered that its market share in POU was in the region of [25-35 per cent].