

ACQUISITION BY JD SPORTS FASHION PLC OF FOOTASYLUM PLC

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that JD Sports Fashion plc and Footasylum plc (**Footasylum**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Pentland Group PLC (**Pentland**) and JD Sports Fashion plc (**JD Sports**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 17 May 2019.
2. This Order applies to Pentland and JD Sports.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Pentland or JD Sports to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Pentland and Footasylum businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Pentland and JD Sports shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Footasylum business with the Pentland business;
 - (b) transfer the ownership or control of the Pentland business or the Footasylum business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Footasylum business or the Pentland business to compete independently in any of the markets affected by the transaction.
5. For the avoidance of doubt, nothing in this Order shall prevent the transfer of beneficial and legal ownership of all Footasylum issued shares to JD Sports including by way of compulsory acquisition.
6. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Pentland and JD Sports shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Footasylum business is carried on separately from the Pentland business and the Footasylum business's separate sales or brand identity is maintained;
 - (b) the Footasylum business and the Pentland business are maintained as a going concern and sufficient resources are made available for the development of the Footasylum business and the Pentland business, on the basis of their respective pre-merger 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 Footasylum business or the Pentland business;

- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Footasylum business and the Pentland business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Footasylum business or the Pentland business are disposed of; and
 - (iii) no interest in the assets of the Footasylum business or the Pentland business is created or disposed of;
- (f) there is no integration of the information technology of the Footasylum or Pentland businesses, and the software and hardware platforms of the Footasylum business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Footasylum business will be carried out by the Footasylum business alone and for the avoidance of doubt the Pentland business will not negotiate on behalf of the Footasylum business (and vice versa) or enter into any joint agreements with the Footasylum business (and vice versa);
- (h) all existing contracts of the Footasylum business and the Pentland business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Footasylum business or Pentland business;
- (j) no key staff are transferred between the Footasylum business and the Pentland business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Footasylum business and the Pentland business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass,

directly or indirectly, from the Footasylum business (or any of its employees, directors, agents or affiliates) to the Pentland business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

7. Pentland and JD Sports shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Pentland and JD Sports shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Pentland and JD Sports and their subsidiaries with this Order. In particular, on 31 May 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Pentland and JD Sports or other persons of Pentland and JD Sports as agreed with the CMA shall, on behalf of Pentland and JD Sports, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
9. Pentland and JD Sports shall ensure that, on 31 May 2019, and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the person responsible for the management of Footasylum or other persons of Footasylum as agreed with the CMA shall, on behalf of Footasylum, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
10. At all times, Pentland and JD Sports shall, or shall procure that Footasylum shall, actively keep the CMA informed of any material developments relating to the Footasylum business or the Pentland business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Footasylum business or the Pentland business;
 - (b) any interruption of the Footasylum or Pentland 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 won or lost or substantial changes to the customer contracts for the Footasylum or Pentland business including any substantial changes in customers' demand; and

(d) substantial changes in the Footasylum or Pentland business's contractual arrangements or relationships with key suppliers.

11. If Pentland or JD Sports has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Pentland and/or JD Sports may be directed to appoint under paragraph 12.
12. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
13. Pentland and JD Sports shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

14. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

15. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 17 May 2019;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'Footasylum' means Footasylum plc a company registered in England and Wales with company number 05535565;

'the Footasylum business' means the business of Footasylum and its subsidiaries carried on as at the commencement date;

'JD Sports' means JD Sports Fashion plc, a company registered in England and Wales with company number 01888425;

'the JD Sports business' means the business of JD Sports and its subsidiaries but excluding the Footasylum business, carried on as at the commencement date;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by Footasylum or Pentland/JD Sports and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Footasylum and Pentland/JD Sports;

'Pentland' means Pentland Group PLC, a company registered in England and Wales with company number 793577;

'the Pentland business' means the business of Pentland and its subsidiaries (including JD Sports), but excluding the Footasylum business, carried on as at the commencement date;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which JD Sports and Footasylum have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Pentland business and the Footasylum business;

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

Elie Yoo
Assistant Director, Mergers

Compliance statement for [Pentland/JD Sports] [Footasylum]

I [insert name] confirm on behalf of [Pentland Group PLC (Pentland) / JD Sports Fashion PLC (JD Sports)] / [Footasylum PLC (Footasylum)] that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Pentland/JD Sports has complied with the Order made by the CMA in relation to the transaction on 17 May 2019 (the Order).
 - (b) Pentland/JD Sports' subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Pentland/JD Sports that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Footasylum business with the Pentland business;
 - (ii) transfer the ownership or control of the Pentland business or the Footasylum business or any of their subsidiaries;¹ or
 - (iii) otherwise impair the ability of the Footasylum business or the Pentland business to compete independently in any of the markets affected by the transaction.
 - (b) The Footasylum business has been carried on separately from the Pentland business and the Footasylum business's separate sales or brand identity has been maintained.

¹ For the avoidance of doubt, nothing in the Order shall prevent the transfer of beneficial and legal ownership of all Footasylum issued shares to JD Sports including by way of compulsory acquisition.

- (c) The Footasylum business and the Pentland business have been maintained as a going concern and sufficient resources have been made available for the development of the Footasylum business and the Pentland business, on the basis of their respective pre-merger business plans.
- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Footasylum business or the Pentland business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Footasylum business and the Pentland business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Footasylum business and the Pentland business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Footasylum business or the Pentland business have been disposed of; and
 - (iii) no interest in the assets of the Footasylum business or the Pentland business has been created or disposed of.
- (g) There has been no integration of the information technology of the Footasylum or Pentland businesses, and the software and hardware platforms of the Footasylum business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Footasylum business have been carried out by the Footasylum business alone and, for the avoidance of doubt, the Pentland business has not negotiated on behalf of the Footasylum business (and vice versa) or entered into any joint agreements with the Footasylum business (and vice versa).
- (i) All existing contracts of the Footasylum business and the Pentland business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.

- (j) No changes have been made to key staff of the Footasylum business or the Pentland business.
- (k) No key staff have been transferred between the Footasylum business and the Pentland business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Footasylum business and the Pentland business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Footasylum business (or any of its employees, directors, agents or affiliates) to the Pentland business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Footasylum business or the Pentland business;
 - (ii) interruptions of the Footasylum business or the Pentland business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Footasylum business or the Pentland business; or
 - (iv) substantial changes in the Footasylum or Pentland business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Pentland/JD Sports and its subsidiaries remain in full compliance with the Order and will, or will procure that Footasylum, continue actively to keep the CMA informed of any material developments relating to the Footasylum or the Pentland business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [PENTLAND GROUP PLC/JD SPORTS FASHION PLC]
/ [FOOTASYLUM PLC]

Signature

Name

Title

Date