

Completed acquisition by JD Sports Fashion plc of Footasylum plc

Decision to refer

ME/6827/19

The CMA's decision to refer under section 22 of the Enterprise Act 2002 given on 19 September 2019.

Introduction

1. On 12 April 2019, JD Sports Fashion plc (**JD Sports**) acquired Footasylum plc (**Footasylum**) (the **Merger**). JD Sports (which is 57% owned by Pentland Group Plc (**Pentland**)) and Footasylum are together referred to as the **Parties**.
2. On 19 September 2019, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).¹
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, in order to allow the Parties the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision. On 19 September 2019 the CMA extended the statutory four-month period mentioned in section 24(1) of the Act by notice pursuant to section 25(4) 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 before the end of the five working day period specified in section 73A(1)(a) of the Act. The SLC

¹ See <https://www.gov.uk/cma-cases/jd-sports-fashion-plc-footasylum-plc-merger-inquiry>.

Decision stated that the CMA would refer the Merger for a phase 2 investigation pursuant to sections 22(1), and in accordance with section 34ZA(2) of the Act, if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period (ie by 24 September 2019); if it indicated before this deadline that it did not wish to offer such undertakings; or if the undertakings offered were not accepted.

5. On 26 September 2019, JD Sports informed the CMA that it would not offer such undertakings to the CMA. Accordingly, pursuant to section 25(5)(b) of the Act the extension to the four-month period mentioned in section 24(1) of the Act ends on 10 October 2019.

Decision

6. Therefore, pursuant to sections 22(1) and in accordance with section 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

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Competition and Markets Authority
1 October 2019