

Summary of Issues Statement Response by Company A

Conditions of competition on the market

- (1) The brands are the key decision-makers in the industry. The reputation of the brands amongst consumers relies heavily on special make-up (“**SMU**”)/exclusive and high-end/premium products which the brands currently supply only to a limited number of large-scale multi-brand retailers in the UK (“**Restricted Products**”). These products are marketed prominently by the brands and are perceived as high status symbols by consumers. Because of the marketing surrounding them, Restricted Products generate a so-called 'halo effect' (i.e., positive associations) that extends not only to other brands' products but also to the retailer displaying Restricted Products in-store and even to other brands displayed alongside them.
- (2) Brands determine what products they supply to each retailer, based on an internal segmentation of their products into categories and tiers and a corresponding categorisation of retailers. This product/retailer segmentation by the brands is an important parameter for retail competition in this industry.
- (3) More specifically brands segment their footwear and apparel products into **lifestyle** and **sporting goods**. Sporting goods are used for performance purposes (e.g., running shoes) and lifestyle products are *sport-inspired* but used for fashion or social wear. The brands often shift particular product models from one category to the other (e.g., from sporting goods to lifestyle). The brands then split each of the lifestyle and sporting goods segments into four tiers: 'good', 'better', 'best', and 'pinnacle'. These tiers are based on the brand positioning and marketing that brands have invested in each of them, with the 'better', 'best' and 'pinnacle' categories subject to increasing brand investment, giving them a perceived level of quality and brand recognition that make them progressively critical to driving retail footfall, retail sales (beyond the sales of products solely within these tiers), and retail brand positioning. The 'better' and 'best' products in the lifestyle category would largely overlap with the definition of Restricted Products in the lifestyle segment. The 'good' tier is less important to driving footfall and consequently retail sales because these are essentially entry-level products.
- (4) As the CMA identified in its Phase 1 decision, not all retailers have access to all products from major brands.¹ In Company A's experience, brands apply a

¹ Phase 1 decision, paragraphs 53 *et seq.*

selective distribution system whereby each retailer is assigned to receive supplies of certain categories and tiers of product.

- (5) The result of this segmentation policy creates a situation where in the UK, post-Merger, only two large-scale multi-brand retailers will continue to receive supplies of Restricted Products: JD Sports/Footasylum and [X] (the latter to a much lesser extent). The Merger reduces retail competition in the Restricted Products (and secondary product sales driven by the wider halo effect of the Restricted Products) and makes coordination on the market easier.
- (6) As the CMA already found in its Phase 1 decision, no retailer can credibly compete with the merged entity without access to a sufficient range of Restricted Products. Access to Restricted Products is "*vital for multi-brand retailers*".² Retailers don't just need access to Restricted Products to compete – they need access to the *right volume* and the *right range* of Restricted Products *at the right time* in their commercial cycle. And retailers need these supplies *consistently* to allow them to build their reputation with consumers.

Market definition

- (7) The CMA's Issues Statement proposes the following market segmentations:
 - (a) Sports-inspired casual footwear; and
 - (b) Sports inspired casual apparel.³
- (8) These proposed segmentations are not nearly narrow enough to accurately capture the relevant market within which the merging parties are competing. They fail to take into account two critical factors determining the strength of competition between the merging parties:
 - (a) the importance of the product segmentation and distribution policy of the brands; and
 - (b) how critical Restricted Products are for retailers' ability to compete.
- (9) The narrowest candidate market on which the merging parties overlap is no larger than the Restricted Products (and potentially narrower, focused on those restricted products that are really driving footfall and competition). Given the importance of the Restricted Products, as outlined above, there is no basis or evidence to support a widening of this candidate market (demand-side

² See paragraph 54 of CMA Phase 1 decision citing Global Data report, The UK Sportswear Market 2018-2023, page 10 <https://www.globaldata.com/store/report/vr0158sr--the-uk-sportswear-market-2018-2023/>.

³ Issues Statement, paragraph 18.

substitutes are likely to be very limited). On this basis, Company A believes that the Restricted Products represent the relevant product market.

Unilateral effects

- (10) Company A shares the CMA's concerns about horizontal unilateral effects arising from the Merger:
- (a) The Merger eliminates Footasylum, one of the only three large-scale multi-brand retailers having access to Restricted Products in the UK.
 - (b) JD Sports and Footasylum are each other's closest competitor in the UK.
 - (c) JD Sports and Footasylum target the same profile of consumer.
 - (d) Competitive constraints on the combined entity are (and will continue to be) limited as:
 - i Rival retailers are not able to compete due to the lack of supplies of Restricted Products.
 - ii Any new entry or expansion can only be successful if sponsored by the brands through supplies of the 'must-have' Restricted Products.
 - iii The consumer base is widely dispersed and has no real bargaining power vis-à-vis the retailers or the big brands.

Coordinated effects

- (11) The CMA's findings at Phase 1 also strongly indicate the existence of coordinated effects detrimental to consumers in the UK, which the CMA's merger inquiry to date does not appear to have taken into account.
- (12) Company A observes a fact-pattern and pattern of behaviour on the market that is consistent with an implicit (or explicit) understanding between JD Sports and key suppliers that results in protecting JD Sports from retail competition. The removal of Footasylum is highly likely to exacerbate this coordinated conduct.