

Completed acquisition by JD Sports Fashion plc of Footasylum plc

Summary of provisional findings

Notified: 11 February 2020

Overview

1. The Competition and Markets Authority (CMA) has provisionally found that the completed acquisition by JD Sports Fashion plc (JD Sports) of Footasylum plc (Footasylum - together, the Parties) (the Merger) has resulted or may be expected to result in a substantial lessening of competition (SLC) in the retail supply of sports-inspired casual footwear (in-store and online) and an SLC in the retail supply of sports-inspired casual apparel (in-store and online) to consumers in the United Kingdom (UK).
2. This is not our final decision and we invite any interested parties to make submissions on these provisional findings by **3 March 2020**.
3. Alongside these provisional findings, we have published a notice of possible remedies which sets out our initial views on the measures that might be required to remedy the SLCs we have provisionally found. We also invite submissions on these initial views by **25 February 2020**.
4. We will take all submissions received by these dates into account in reaching our final decision, which will be issued by 11 May 2020.

Background

Our inquiry

5. In a merger inquiry, the CMA must decide:
 - (a) whether a relevant merger situation has been created within the meaning of section 23 of the Enterprise Act 2002 (the Act). We have provisionally found that this has been created as a result of the Merger;

- (b) whether this has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services. We have provisionally found SLCs and a summary of our findings is set out below;
 - (c) what action we might take for the purposes of remedying, mitigating or preventing any SLC or resulting adverse effect we have identified. This is the subject of the notice of possible remedies we have published alongside these provisional findings, in which we have discussed whether to prohibit the Merger by requiring divestment of the entirety of Footasylum, or whether any other measures could effectively remedy the SLCs we have provisionally found.
6. In addressing the questions above, we have considered a range of different evidence that we received from the Parties, their customers and other retailers and suppliers through submissions, responses to information requests, surveys and hearings.

The Parties and the Merger

7. JD Sports is an international retailer of sports, fashion and outdoor wear. It operates a number of different store brands in the UK, its largest being JD Sports (375 stores across the UK and nationally online) which sells a range of branded sports-inspired casual footwear and apparel, and some own-brand apparel. It has consistently performed very well financially and has, over the years, substantially grown its business. JD Sports is 55% owned by Pentland Group, which owns and invests in retail and wholesale sports, fashion and outdoor businesses.
8. Footasylum is a UK-based retailer of sportswear and fashionwear founded in 2005. It has grown such that it now operates 70 stores in the UK and online nationally. It sells a range of branded sports-inspired casual footwear and apparel, including a sizeable proportion of its own-brand apparel.
9. JD Sports has already acquired Footasylum although the two businesses remain separate. JD Sports' public offer for the issued ordinary share capital of Footasylum was accepted on 12 April 2019.

The industry

10. The sportswear sector is estimated to be worth around £5.5 billion in the UK and is forecast to grow substantially (20% by 2023). The distinction between sportswear and fashionwear is often fluid. Sportswear can be used for sports or fitness activities (often referred to as performance sportswear). It may also be used for leisure activities or dressing casually, which we have referred to

as sports-inspired casualwear (also known as athleisure), and this is a trend particularly among younger consumers.

11. There is a range of retailers selling branded and non-branded sports-inspired casualwear in-store and/or online. Some of these multi-brand retailers primarily sell footwear and others, such as the Parties, sell both footwear and apparel. Some suppliers of branded products are also retailers in their own right, selling their products directly to consumers; Nike and adidas are the leading mono-brand retailers among other much smaller ones.
12. There are a number of key trends in this sector which we have taken into account in our inquiry:
 - (a) growth of online sales and the interplay between shopping in-store and online; the shopping experience in this sector increasingly starts online through social media, and customers can browse and shop both in-store and online. The use of online shopping in this sector is growing fast and is a key driver of overall growth. Some retailers selling sports-inspired casualwear, such as ASOS, only operate online. However, the majority of sales are still from stores and therefore in-store remains an important channel (ie route to customers);
 - (b) importance of brands and access to branded products; suppliers of branded products have an influential role in the sport-inspired casualwear sector, particularly in footwear where Nike and adidas make up the majority of sales. Suppliers decide which products to supply to different retailers. Access to branded products, particularly higher-tier 'top of the range' or exclusive products from suppliers, is important for retailers such as the Parties in attracting consumers; and
 - (c) growth in 'direct to consumer' (DTC) sales by suppliers; many suppliers are seeking to expand their own retail offering by selling more of their products directly to consumers through stores and in particular by growing their online business.

Our provisional findings

Counterfactual

13. In order to assess the effects of a merger on competition, the CMA determines what it expects the competitive situation would have been most likely absent that merger – the 'counterfactual'. This provides a benchmark against which the effects of a merger are assessed.

14. We have examined a range of evidence, including Footasylum's financial forecasts and strategy documents at the time of the Merger, commentary from industry analysts, and submissions from the Parties. We have provisionally found that the most likely counterfactual is that Footasylum would have continued to operate and compete effectively absent the Merger, although we recognise it had been in a weaker financial position around the time of the Merger.

Market definition

15. The Parties retail footwear and apparel products sold in-store and online. We consider that footwear and apparel are separate markets as they are not substitutable products and retailers focus on each to differing degrees. Within each, we have defined the market for the retail supply of 'sports-inspired casual' footwear and apparel, which is where the Parties overlap. But we note that the Parties stock a range of different products and the distinction between these is not necessarily clear. Market definition does not determine the outcome of our competitive assessment and delineating a relevant market can be difficult where the offerings of retailers are highly differentiated. We have therefore assessed all relevant constraints, including those from a wide range of different types of retailers.
16. We have defined online and in-store channels as being in the same market, although the evidence is not clear-cut. We recognise that many customers are shopping both online and in-store and using these channels interchangeably. Some customers appear to have strong preferences for one or the other channel and we note that there are some differences in the shopping experience between the two. However, we have found that a sufficient proportion of customers currently shop in both channels or would be prepared to move between them, such that the two channels could be considered within the same market. Therefore, on balance, we have defined a combined in-store and online market, but in our competitive assessment we have considered any differences between the constraints on these channels.
17. We have provisionally defined the relevant markets as national. Although demand is locally driven, the main parameters of competition are set nationally and therefore we have focused our competitive assessment on a national basis.

Our approach to assessing the Merger

18. We have assessed the horizontal unilateral effects of the Merger nationally across the UK in:

- (a) the retail supply of sports-inspired casual footwear (in-store and online);
and
 - (b) the retail supply of sports-inspired casual apparel (in-store and online).
- 19. We have assessed whether the Merger has removed a direct independent competitor from these markets, which previously provided a competitive constraint. In doing so this might allow the Merged Entity to worsen or not improve its offering as much as it would otherwise, resulting in higher prices and/or reduced quality, range and service (collectively referred to as PQRS). We have focused our assessment of the Merger on a national basis and have not undertaken separate analyses in each local area.
- 20. We have also assessed whether possible coordinated effects would arise, or be made more stable or effective, as a result of the Merger. Coordinated effects may arise when businesses recognise that they are mutually interdependent and that they can reach a more profitable long term outcome if they avoid strong rivalry in the short term, and instead coordinate or align their behaviour (without any unlawful or direct communications).
- 21. We have assessed a range of different qualitative and quantitative evidence, which we have considered in the round to inform our provisional findings:
 - (a) a large number of the Parties' internal documents concerning the retailers they monitor, which provided compelling evidence about this market and competition between retailers;
 - (b) responses from over 10,000 customers of JD Sports and Footasylum through a store exit and online customer survey to understand how customers shop and which other retailers they might switch to. We have not given the online survey full evidential weight because the response rate was below the CMA's minimum threshold;
 - (c) views from retail competitors and suppliers, internal documents, and evidence on strategic plans and future development;
 - (d) evidence relating to the impact and growth of DTC;
 - (e) evidence on the effect of retailers' store openings and closures on JD Sports' stores, such as the impact on store revenues;
 - (f) evidence on the Parties' and other retailers' offers, in terms of range, product offering, target consumer markets, and how these differ;
 - (g) documents related to the selective distribution arrangements and segmentation policies of a range of suppliers, and evidence particularly

relating to the role and influence of key suppliers namely Nike and adidas; and

- (h) evidence on market shares which gave an indication of the Parties' presence, but do not capture the closeness of competition between retailers in differentiated markets such as these.

Our competitive assessment of unilateral effects - footwear

22. There are a range of different retailers, including the Parties, competing to attract consumers through one or more aspects of PQRS. To assess the Merger, we have considered the closeness of competition between the Parties and the constraint from other retailers (both now and in the foreseeable future). Generally, the closer retailers are, the more strongly they compete with each other.
23. However, given the importance of suppliers of branded products in this market, we have first considered their role and impact on how retailers compete. The Parties told us that suppliers' influence and control over retailers was a reason why they would have no incentive and/or ability to worsen PQRS post-Merger.

Role of suppliers and their impact on how retailers compete

24. Suppliers can both restrict and impact retailers' competitive offering in several different ways, for example through controlling and restricting the type and volume of branded products retailers can access and aspects of quality eg store and product presentation. This is particularly the case for the largest two suppliers, Nike and adidas, due to their current size, popularity and significance in footwear for retailers. Nike and adidas are materially more restrictive compared to smaller suppliers.
25. Suppliers may also influence retailers' offering in other ways; they provide a 'recommended retail price' (RRP) which retailers typically follow and can influence aspects of the retail offering such as store fittings or website design (where we have seen evidence of suppliers monitoring this and comparing retailers against each other).
26. The criteria set by suppliers typically establish a minimum standard which retailers are expected to meet. Above this, retailers retain commercial freedom to operate and compete on significant aspects of their competitive offering. This leaves scope for competition between retailers on a variety of different aspects. In addition, any restrictions are not 'set in stone' and could be changed post-Merger.

27. Furthermore, suppliers have mixed incentives in relation to retail competition which are not fully aligned with consumers' interests. For example, suppliers benefit from retail competition on quality (eg quality of stores and presentation of their products), which they monitor and encourage greater levels of competition to see retailers improving above and beyond the minimum standards they set. But suppliers do not necessarily have the same incentives on price competition, as this may undermine perceptions of their brand and its value. Further, suppliers are competitors themselves through their DTC offer, which could undermine their incentives to encourage greater retail competition. Therefore, we have provisionally found that the role of suppliers would not prevent the Parties from having either the ability or incentive to degrade PQRS post-Merger.
28. We have found that the Parties and other retailers currently compete on and could change PQRS in a number of ways post-Merger eg clearance discounting, student discounts, delivery charges, pay-later options, marketing, store refurbishment, website design and functionality, loyalty programmes, the range of brands offered, staffing and customer service levels. We have also seen retailers introducing technological innovations such as in-store kiosks to access online stock, digital displays and more efficient in-store product retrieval systems. These are all important aspects of competition which consumers value and benefit from, which could be affected by the Merger.

Competition between the Parties

29. The Parties are both national multi-brand retailers of sports-inspired casual footwear. JD Sports is the largest retailer in this market, particularly in-store but it is also large online. Footasylum is smaller and therefore the increment in market share as a result of the Merger is fairly low. However, in differentiated markets such as this, shares do not capture the closeness of competition between retailers.
30. We have looked at a range of evidence to assess how closely they compete. We have found that the Parties are close competitors and that JD Sports provides a stronger constraint on Footasylum than vice versa. Where businesses are close competitors in a market, as the Parties are, the competition lost from the merger is more significant than if they competed less closely.
31. There are significant similarities between the Parties' footwear offerings. They both target 16-24 year old consumers with a focus on male consumers, although the focus on males is more pronounced for Footasylum. Both have a well-established in-store and online offering. There is a high degree of geographic overlap between the Parties (all Footasylum stores overlap with at

least one JD Sports store) and the Parties both have sizeable national online offerings. The Parties stock a similar range of branded sports-inspired casual footwear and a majority of both the Parties' footwear revenues are from Nike and adidas products. Other retailers told us that the Parties were close competitors to each other. When asked to rank closeness, the Parties' scores against each other were the highest.

32. The evidence from the Parties' internal documents showed that they routinely monitor each other and that they consider themselves to be close competitors. In Footasylum's documents, the references to JD Sports are prominent in its monitoring, showing that JD Sports is a particularly significant competitor to Footasylum. Footasylum's documents discussed at senior levels regularly cover JD Sports in some detail and compare their performance. In JD Sports' documents, Footasylum is also prominent in its monitoring, but this is comparable to Foot Locker, ASOS, Nike and adidas who receive similar coverage. In addition to a significant amount of evidence showing they monitor each other, we consider this monitoring is likely to have informed the Parties' strategic decisions and was sometimes followed by responsive actions to each other (for example around student discounts and pay-later offers). These documents demonstrated that the Parties are close competitors both in-store and online.
33. Evidence from our surveys showed that JD Sports is by far the closest competitor to Footasylum. Our surveys asked the Parties' customers what they would do if all of the stores of the business that they had shopped at were closed (or for the online survey if they had stopped selling online), which indicates which other retailers the Parties' customers view as alternatives. A very high proportion of Footasylum's customers said that they would divert to JD Sports (68% for in-store and 46% for online). This is substantially higher than for any other retailer.
34. The number of JD Sports customers who said they would divert to Footasylum is also relatively high compared with other retailers (21% for in-store and 16% for online), higher than for any other retailer in-store and only second to Nike online. This showed that Footasylum is a close competitor to JD Sports and there are only a small number of other relatively close retailers eg Foot Locker and Nike (particularly online).
35. Using these survey results we have calculated nationally representative gross upward pricing pressure index (GUPPI) figures for both Parties. These measure the merging parties' incentive to degrade PQRS post-merger or not improve their offering in the way that would have occurred absent the merger. The higher the GUPPI, the greater the incentive because the parties would

stand to gain more in recaptured profits. GUPPIs are a useful and commonly-used measure in the CMA's merger investigations.

36. The GUPPI figures are high for both the Parties, but particularly for Footasylum. In the in-store segment of the market we estimated GUPPIs of [19-27%] for Footasylum and [4-7%] for JD Sports. GUPPI figures of this magnitude show a strong incentive for the Parties to degrade or not improve their offering post-Merger. The asymmetry of the GUPPIs is consistent with other evidence. We also estimated GUPPIs for the online segment and the whole market covering both channels, but did not place full evidential weight on these as they used results from the online survey. Although these GUPPIs are lower than the in-store GUPPIs, they still suggested a strong incentive to deteriorate PQRS.
37. Our analysis of the impact of store openings and closures (entry-exit analysis) indicated that Footasylum is a competitive constraint on JD Sports. We did not have enough data to test JD Sports' constraint on Footasylum. Entry by Footasylum is associated with a fall in nearby JD Sports' store footwear revenue. This analysis also indicated that entry by Footasylum impacts other elements of JD Sports' offering, such as store refurbishments and the proportion of products sold at full price.
38. Overall the evidence showed that the Parties are two significant national retailers in this market both online and in-store. JD Sports is the largest retailer and is a stronger constraint on Footasylum than vice versa. The Parties have very similar offerings, they closely monitor and respond to each other, their customers and other retailers consider them to be close substitutes, and Footasylum's store openings and closures have an impact on JD Sports' stores. The high GUPPIs also showed a strong incentive to raise prices and otherwise worsen or not improve their offering post-Merger.

Constraint from other retailers

39. We have looked at the constraint imposed by other retailers on the Parties (both multi-brand and mono-brand, and those with in-store and/or online-only channels).
40. We have found that Foot Locker is a close competitor to the Parties in footwear. This is supported by evidence from internal documents, the customer surveys (more so for JD Sports than Footasylum), our entry-exit analysis and views from other retailers. It is a large global retailer and in the UK it has a similar number of stores to Footasylum, as well as operating online. Its focus is on footwear and much like the Parties it targets young male consumers. Foot Locker is closely monitored by both Parties, its offering is

similar and the surveys showed non-trivial levels of diversion. The entry-exit analysis indicated that entry or exit of Foot Locker stores impacts JD Sports' store footwear revenue, indicating it is particularly strong in-store. Third parties consider Foot Locker to be a close competitor. It has recently begun to open some larger stores, but its overall number of stores have broadly remained constant. On the basis of this evidence, we consider that Foot Locker is and will remain a strong competitor to the Parties in relation to footwear, although on its own it would not sufficiently constrain the Parties.

41. Sports Direct is a major retailer in the industry with a large number of stores and it operates online. The evidence showed that it currently exerts some constraint on the Parties in footwear. However, this constraint is weaker than its size might suggest because it has a materially different consumer proposition from that of either of the Parties. At present, we consider that it has a very different range of products, with these being generally more sports-focused rather than sports-inspired casual, has a significantly more value-based proposition and has a much broader consumer target market than either of the Parties. Our surveys showed that Sports Direct provides some competitive constraint, more so for JD Sports than Footasylum, but not as strong as the Parties on each other. The Parties' internal documents showed a low degree of monitoring of Sports Direct.
42. We have considered whether the constraint from Sports Direct may increase over the next few years given it is seeking to elevate its offering. This elevation involves improving the quality of its stores, increasing its store size (by converting or opening new stores), enhancing its website and improving its product offering in both the sports and sports-inspired casualwear categories. It has opened a number of elevated stores and has plans to open more over the next few years. We have examined Sports Direct's, Nike's and adidas's internal documents in relation to this strategy.
43. While Sports Direct has had some limited improved access to higher-tier products in these elevated stores, to date this has almost exclusively been focused on sports rather than sports-inspired casual products. Evidence from our store exit survey did not show that Sports Direct poses a stronger constraint on the Parties in areas where it currently has an elevated store, although we have placed limited weight on this. On balance, we found that while Sports Direct may in time become a stronger constraint, the evidence does not show with sufficient certainty that it will become a significantly stronger constraint on the Parties in the next few years. The extent and timing of any increase in strength is uncertain as it is dependent on many factors, including importantly, the supply of sufficient higher-tier sports-inspired casual footwear. Further, this strategy is a significant shift away from its current proposition which may take time to establish itself in consumers' minds.

44. We have found that the Parties monitor a number of other multi-brand competitors such as ASOS (online-only), Schuh and Office (which offer only footwear), although to a lesser extent than they monitor each other. ASOS and Office are strongly focused on female customers (unlike the Parties). Our surveys showed that some of the Parties' customers would divert to their stores or websites but to a much smaller degree than to either of the Parties. Therefore, we consider that although these retailers impose some competitive constraint on the Parties, this is relatively limited.
45. We have analysed other online-only retailers. We recognise that the Parties consider these retailers in terms of potential future threats to their business and this is evidenced in their internal documents. However, the evidence showed that none are currently close competitors. For example, Zalando is focused on other European countries, and Amazon is no longer directly selling Nike or adidas products. This lack of direct competition is supported by our survey results. Amazon did have more of a presence in our online survey, but less than the Parties and other retailers.
46. We have also analysed the constraint imposed by mono-brand retailers, in particular Nike and adidas, who both have retail stores and an online offer. They both have some large flagship stores, but the majority are factory or clearance stores. There is evidence that the Parties monitor them in their internal documents. The exit-entry analysis indicated that Nike stores have an impact on JD Sports' footwear revenues. Our store exit survey showed that both impose some competitive constraint but adidas is weaker than Nike, and both impose much less of a constraint than the Parties do on each other. The online survey suggested that Nike may be closer to the Parties online than in-store, particularly for JD Sports. On this basis, we have found that Nike exerts some constraint on the Parties (particularly online) and adidas is a weaker constraint.
47. We have considered the potential growth in the competitive constraint from Nike and adidas in the UK in the next few years. In our view, based on the evidence available, their DTC offer will grow at a significant rate globally. On that same basis, we consider that it is likely that in the UK their DTC offer will continue to grow but this will be primarily online. There is evidence that the market as a whole is growing but that the ratio of DTC sales to wholesale sales will not change significantly in the foreseeable future. Therefore, while over time Nike and adidas may become more of a constraint on the Parties online, the evidence does not show with sufficient certainty that they will become a significantly stronger constraint over the next few years.
48. Overall, we have found that, other than Foot Locker, there are few other strong competitors to the Parties and a small number of other retailers who

provide only some competitive constraint on the Parties. We recognise that the constraint from some of those retailers may grow over time, but taken together, the evidence does not show with sufficient certainty that this would amount to a materially stronger competitive constraint on the Parties in the next few years.

Provisional conclusion on footwear

49. Based on our assessment, we consider that the Merger will result in the removal of a direct and significant constraint on each of the Parties and that overall the remaining constraints post-Merger (both now and in the foreseeable future) will not be sufficient to prevent an SLC.
50. Therefore, we have provisionally found that the loss of competition between the Parties in sports-inspired casual footwear at the retail level in the UK as a result of the Merger has resulted or may be expected to result, in an SLC.

Our competitive assessment of unilateral effects - apparel

Role of suppliers and their impact on how retailers compete

51. Much like footwear, suppliers have a significant role and impact the way retailers compete through various restrictions, as well as exerting their influence.
52. However, we have found that suppliers have less ability to influence and restrict retailers in apparel than they do in footwear, because Nike and adidas are less significant in apparel than footwear, with retailers stocking a wider range of brands and their own-brand apparel. These other brands represent the majority of Footasylum's apparel sales and a sizeable portion of JD Sports' sales. Other suppliers have less restrictive policies and criteria than Nike and adidas. Overall, suppliers' segmentation policies are generally much less restrictive for apparel than footwear, in relation to volume restrictions.
53. Therefore, although suppliers impact some aspects of PQRS in apparel, this is on a weaker basis than in footwear. For these reasons we consider that suppliers would not prevent the Parties from having either the ability or incentive to degrade PQRS post-Merger.
54. As set out above for footwear, we consider there are a number of different ways that retailers in this market, including the Parties, compete with each other. For example, the Parties monitor and compete on pricing through discounts, such as student discounts or discounts given in key sale periods such as Black Friday, and delivery costs. There is also competition on a

number of non-price aspects as set out in footwear, such as store refurbishment, marketing, website functionality, loyalty programmes, staffing and other technological improvements. Unlike footwear, there is greater potential scope for competition in own-brand apparel, which represents a higher proportion of the Parties' sales.

Competition between the Parties

55. As in footwear, JD Sports is the largest retailer of multi-brand sports-inspired casual apparel. Footasylum is smaller, so the increment in market share is similarly low, but shares do not capture the closeness of competition between retailers.
56. We have found that, as in footwear, the Parties are close competitors for sports-inspired casual apparel, and the constraint imposed by JD Sports on Footasylum is larger than Footasylum's constraint on JD Sports. However, there are some differences in our competitive assessment for apparel.
57. There are some similarities between the Parties' apparel offering, but this is less clear than in footwear. The Parties both stock a similar range of brands but also have some differences in the specific products they stock. Footasylum stock a greater range of its own brands than JD Sports. Other retailers told us that the Parties are close competitors, although some told us that Footasylum's apparel is 'edgier' than JD Sports' apparel.
58. However, the surveys provided important evidence which showed that in practice the Parties' customers see their apparel offerings as closely related, much like they do for footwear. The surveys showed that JD Sports is by far the strongest constraint on Footasylum for apparel, with no other retailers close to imposing the same degree of constraint. We have found that a significant proportion of Footasylum's customers would divert to JD Sports' stores (69% in the store exit survey, and 61% in the online survey). This is substantially higher than for any other retailer (3% diversion to Foot Locker is the next highest proportion from the store exit survey).
59. The proportion of JD Sports customers who said they would divert to Footasylum is smaller (17% for the store exit survey), but still significant relative to other retailers (with only Sports Direct being comparable). For the online survey, diversion to Footasylum was 13% which is only 1% less than the highest diversion to Nike. This showed that Footasylum is a close competitor to JD Sports, although to a lesser extent than vice versa, and there are a limited number of other close competitors.

60. The nationally representative GUPPI calculations are high, indicating a strong level of upward pricing pressure for both Parties, particularly for Footasylum. In the in-store segment of the market we estimated GUPPIs of [19-27%] for Footasylum and [4-7%] for JD Sports. GUPPI figures of this magnitude indicate a strong incentive for either of the Parties to degrade or not improve their offering post-Merger. GUPPIs for the online segment and combined market both used our online survey and therefore we did not place full evidential weight on them. Although they were lower than the in-store GUPPIs, this still indicated a strong incentive to degrade or not improve their offering.
61. The evidence from the Parties' internal documents does not generally distinguish between footwear and apparel, therefore our findings for footwear also apply to apparel. Overall our detailed review of these documents showed that they regularly monitor each other and that they consider themselves to be close competitors. Footasylum's documents regularly refer to and assess JD Sports in some detail. This demonstrated that JD Sports is Footasylum's closest competitor. For JD Sports we found that Footasylum is also prominent in its monitoring showing it is a close competitor, but this is alongside some other retailers eg Foot Locker, Nike, ASOS and adidas. We found that their monitoring is likely to have informed the Parties' strategic decisions and is sometimes followed by responsive actions.
62. The results of our analysis of store openings and closures in relation to apparel indicated that entry by Footasylum is associated with a fall in nearby JD Sports' store apparel revenue, as well as impacting on other aspects of its offering such as store refurbishment.

Constraint from other retailers

63. Unlike footwear, we provisionally found that no other retailers clearly exert a strong constraint on the Parties in apparel.
64. In relation to Foot Locker, third parties viewed it as being close and our entry-exit analysis indicated that its entry has an impact on JD Sports' apparel revenue. However, it has a very limited apparel offering and our store exit survey showed it exerts only some constraint on JD Sports, but much less so than Footasylum (consistent with the online survey) and a very weak constraint on Footasylum. There was no evidence that its strength in apparel would grow significantly in the next few years. Therefore, overall we have found that Foot Locker is not a strong constraint on the Parties in apparel.
65. We have found that Sports Direct exerts some competitive constraint on the Parties, and this is greater in apparel than it is in footwear. Our surveys

showed that it imposes a constraint on JD Sports comparable to that of Footasylum, but a much weaker constraint on Footasylum. Third parties considered Sports Direct as having some constraint on the Parties. However, Sports Direct has a different apparel offering from the Parties with currently a much greater focus on lower-priced products. Although there is some monitoring by the Parties of Sports Direct in their internal documents, this is to a much lesser extent than other retailers and Footasylum.

66. Our online survey suggested that ASOS exerts some constraint on the Parties, particularly for JD Sports and the Parties' internal documents showed that they monitor ASOS. However, the store exit survey did not show any significant constraint from ASOS to either of the Parties. Further, ASOS is more focused on the female market than the Parties. On the basis of this evidence, we have found that ASOS exerts some constraint on the Parties online but a weak constraint on them in-store. The evidence also showed that none of the other online-only retailers are currently close competitors. This lack of direct competition is supported by our surveys. Amazon does have more of a presence in our online survey for JD Sports, but this is less than other retailers.
67. There is evidence that a number of other high-street retailers impose some constraint on the Parties, but this constraint is relatively weak. Evidence from internal documents showed there is some monitoring by Footasylum, in particular of fashion retailers. However, our surveys did not show they are close competitors and they do not sell similar branded products to either of the Parties. Furthermore, none of these retailers consider themselves to be competitors to either of the Parties.
68. As with footwear, we also looked at the constraint imposed by mono-brand retailers, in particular Nike and adidas. Our store exit survey showed that these retailers impose some constraint on the Parties, particularly on JD Sports, but this is much lower than Footasylum. The online survey suggested that Nike and adidas may be a stronger constraint on the Parties online than in-store. The Parties monitor both these retailers in their internal documents and the entry-exit analysis showed that Nike stores impact JD Sports' apparel revenues. On balance, we consider that Nike imposes some constraint on JD Sports, but a weak constraint on Footasylum and adidas is a weaker constraint on both.
69. We have considered whether the competitive strength of any of the existing retailers is likely to significantly increase in the new few years either through repositioning or expansion. For example, we considered the impact of the elevation of Sports Direct's stores, DTC growth online, repositioning of Foot Locker to focus on apparel and the growth of online-only players such ASOS.

For similar reasons to our footwear assessment, we recognise that while the constraint from some of those retailers may grow over time, taken together the evidence does not show with sufficient certainty that this would result in a materially stronger competitive constraint on the Parties in the next few years.

70. Overall, we have found that no other retailers are as close competitors as the Parties are to each other. Retailers such as Sports Direct and Nike (particularly online) impose some constraint but none more so than either of the Parties and no retailers are a strong constraint.

Provisional conclusion on apparel

71. Based on our assessment, we consider that the Merger will result in the removal of a direct and significant constraint on each of the Parties and that overall the remaining constraints post-Merger (both now and in the foreseeable future) will not be sufficient to prevent an SLC.
72. Therefore, we have provisionally found that the loss of competition between the Parties in sports-inspired casual apparel at the retail level in the UK as a result of the Merger has resulted or may be expected to result, in an SLC.

Our assessment of coordinated effects

73. During the course of our inquiry, we have received submissions from some third parties raising concerns about coordination, to varying degrees of detail. Accordingly, we examined whether coordination is more likely as a result of the Merger.
74. We have considered a possible form of coordination involving Nike, adidas and JD Sports coordinating around the price of and access to higher-tier branded products and specifically, whether the Merger would reinforce any such coordination. In essence, the theory is that Nike and adidas would grant JD Sports preferential access to their products and in return JD Sports would limit its discounting for Nike and adidas products (ie from RRP) and restrict its stock and sale of other suppliers' products.
75. We have not seen sufficient evidence to support this theory of harm and therefore we have not provisionally found an SLC on these grounds.

Countervailing factors

76. We have considered whether there are any factors which may prevent the SLCs we have provisionally found. These include entry or expansion by other

businesses into the supply of sports-inspired casual footwear or apparel, or the effect of any rivalry-enhancing efficiencies arising from the Merger.

77. We have not found evidence that there would be timely, likely and sufficient entry or expansion into these markets. In particular, no retailer told us they have plans to enter or expand significantly in either of the relevant markets.
78. While it is possible for a large existing non-UK retailer to enter, (particularly if this is supported by Nike and adidas, or it already has access to branded products) we have not seen evidence of any concrete plans that entry on a sufficient scale such that it would be likely and timely, given how long it would take to establish a national store footprint and build UK retailer brand recognition with consumers. It has taken Footasylum more than a decade to establish itself and develop its network of stores.
79. Similarly, we have not found that expansion from UK retailers operating in adjacent markets, such as other high street fashion retailers would be timely, likely and sufficient, given the time and challenges they would face in substantially repositioning themselves.
80. We have found that it would be easier to enter and expand at least initially as an online-only retailer, as ASOS and some other retailers have done. However, access to branded products and building a nationally recognised proposition remain significant barriers. Furthermore, although this could provide a stronger constraint to the Parties' online businesses, we consider that it would be a weaker constraint on their in-store business. Therefore, we do not consider that online entry and expansion would be timely, likely and sufficient to prevent the SLCs we have provisionally found.
81. The Parties submitted some evidence regarding a number of efficiencies they considered would result from the Merger. However, we have not seen any evidence that these efficiencies would be rivalry-enhancing, Merger-specific and sufficient to prevent the SLCs we have provisionally found.

Provisional conclusions

82. We have provisionally concluded that the completed acquisition by JD Sports of Footasylum has resulted or may be expected to result in SLCs in the retail supply of sports-inspired casual footwear (in-store and online) and the retail supply of sports-inspired casual apparel (in-store and online) in the UK. The Merger removes a direct and significant constraint on each of the Parties in these markets, resulting in substantially less competition on PQRS and a weaker incentive to improve as much as they would otherwise.

83. We have provisionally concluded that the Merger is not likely to result in an SLC from coordinated effects in the relevant markets.