

Completed acquisition by JD Sports Fashion plc of Footasylum plc

Provisional findings report

Notified: 11 February 2020

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Glossary

Summary of provisional findings

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.

Provisional findings

1. The reference

- 1.1 On 1 October 2019, in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), the Competition and Markets Authority (CMA) referred the completed acquisition by JD Sports Fashion plc (JD Sports) of Footasylum plc (Footasylum)¹ (the Merger) for further investigation and report by a group of independent panel members (the Inquiry Group).² The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. Having decided to extend the statutory timetable by eight weeks, the Inquiry Group is required to publish its final report by 11 May 2020.³
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods and services.
- 1.3 This requires that the CMA assesses what effect the Merger will have on competition, which is the process of rivalry over time between businesses seeking to win consumers' business by offering them a better deal. An SLC occurs when rivalry is substantially lessened after a merger than would otherwise have been the case, resulting in a worse outcome for consumers.⁴
- 1.4 This document together with its appendices constitutes the Inquiry Group's provisional findings, published and notified to JD Sports and Footasylum in line with the CMA's rules of procedure.⁵ Further information relevant to this inquiry, including non-confidential versions of the submissions received from JD Sports, Footasylum and third parties, as well as summaries of evidence received in oral hearings, can be found on the CMA's website.⁶

¹ JD Sports' offer for Footasylum was declared wholly unconditional on 12 April 2019. Consequently, Footasylum was delisted from the Alternative Investment Market on the London Stock Exchange, and on 19 September 2019, Footasylum changed its name from Footasylum plc to Footasylum limited. References to Footasylum in this document should be interpreted as covering both Footasylum plc (in the period prior to 20 September 2019) and Footasylum limited (in the period since 20 September 2019).

² Section 22(1) of the Act provides that the Inquiry Group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

³ Notice of extension, 11 February 2020.

⁴ CMA, *Quick guide to UK merger assessment (CMA18)*, paragraph 3.1.

⁵ CMA, *Rules of procedure for merger, market and special reference groups (CMA17)*, paragraphs 11.1-11.7.

⁶ JD Sports/Footasylum merger inquiry webpage.

1.5 Throughout this document we refer to JD Sports and Footasylum collectively as 'the Parties'.

2. Industry background

Introduction

2.1 In this chapter we have provided an overview of the UK footwear and apparel retail sectors, in particular sports-inspired casualwear, in which the Parties are active (see also chapter 7).

Overview of the industry

2.2 The footwear and apparel retail sectors include sportswear and fashionwear. Sportswear encompasses products that are largely used by consumers for sports or fitness activities (often referred to as sports performance), but which may also be used for leisure activities or dressing casually. Fashionwear includes a wide range of different types, styles and brands of products sold to consumers by a large number of different retailers. Fashion products are bought and used by consumers for different purposes, including as formalwear, business attire, for leisure and sports, among others. Both sectors are trend-driven and influenced by marketing, events, designers, social media, celebrities and other factors.

2.3 The distinction between sportswear and fashionwear and consumers' perceptions of them is often fluid, with sportswear also being worn as fashionwear. This, coupled with the fast-changing nature of fashion, makes it difficult to distinguish clearly between the sectors and different products within them.

2.4 The UK sportswear sector was estimated to be around £5.5 billion in 2018,⁷ making it the third largest in Europe, behind Germany and France,⁸ with apparel and footwear having a roughly even share. The sector is forecast to grow by around 20% between 2018 and 2023, and reach £6.7 billion by 2023,⁹ growing faster than the wider apparel and footwear industry.¹⁰ This growth has been reportedly driven by shifting consumer lifestyle preferences for healthy living and greater participation in sports and fitness.¹¹

2.5 Growth in sportswear has also been attributed to the 'sports-inspired casualwear' sector, also known as 'sports casual', 'athleisure' or 'active wear'. This growth has arisen as a result of consumers becoming more conscious

⁷ GlobalData, The UK Sportswear Market 2018-2023, page 13

⁸ Suisse, European sporting goods (December 2018), page 8

⁹ GlobalData, The UK Sportswear Market 2018-2023, page 3 and 13.

¹⁰ Berenberg, Sports Retail, page 5.

¹¹ Berenberg, Sports Retail, page 4.

about their health and wellbeing, the influence of social media photo-sharing platforms, and a shift in the trend among younger consumers to wear sportswear as fashion items. For example, in footwear, trainers are increasingly worn for purposes other than sports. Sports-inspired casual products, which are products 'not designed to enhance sporting performance, but are instead geared towards fashion trends', are estimated to account for approximately half of the sportswear sector, with performance (38%) and outdoor (11%) comprising the remainder.¹²

- 2.6 Multi-brand retailers specialising in sports-inspired casual products, which includes the Parties, have become increasingly important in the sector.¹³ There are a range of multi-brand retailers, some of which primarily sell footwear such as Foot Locker, Office, and Schuh, and others which sell both footwear and apparel, such as Sports Direct and the Parties. These retailers typically stock a range of products from suppliers of branded products such as Nike and adidas¹⁴ and in some cases the retailer's own-brand apparel. Some suppliers, including Nike and adidas, are also retailers in their own right and sell products directly to consumers, as discussed in paragraph 2.16. These retailers (including suppliers when selling directly to consumers) sell their products both in-store and online.
- 2.7 There are also a number of online-only retailers (ie retailers that do not have any stores and sell their products exclusively online) such as ASOS, Amazon, BoohooMAN and Zalando which sell branded sports-inspired casual products. Some of these retailers - such as ASOS - have also launched their own athleisure brands.¹⁵
- 2.8 In addition, fashion specialists, such as Zara, Topshop, H&M, Gap, Primark, Next, Joules and BoohooMAN, have introduced or expanded their own active wear ranges. Some of these fashion specialist retailers have also started selling some branded sports-inspired casual products, for example Next (though only online) and Topshop.

¹² Berenberg, Sports Retail, page 9.

¹³ GlobalData, Clothing & Footwear Retailing in the UK, Market Shares, Summary and Forecasts to 2021, page 29.

¹⁴ Nike and adidas also supply products under other brands - Converse and Jordan, and Reebok respectively. In this document we refer to Nike and adidas as suppliers of branded products of the same name, unless indicated otherwise.

¹⁵ GlobalData, The UK Sportswear Market 2018-2023, page 6.

Key trends

Importance of online and in-store

- 2.9 Sports-inspired casual products are sold to consumers through different routes, such as online or in-store. Different routes to consumers are referred to as 'channels'.
- 2.10 Consumer demand in the sports-inspired casualwear sector centres on multi-channel retail experiences. These increasingly start online through social media, with consumers then having the ability to shop in-store and online through websites and apps on smartphones, tablets and other devices.¹⁶
- 2.11 Consumers increasingly browse and buy in both channels. Consumers can purchase products online and collect and/or return them in-store (known as 'click and collect'). However, there is evidence that shopping in-store remains an important part of the buying experience; for example, research shows that many consumers still want to try trainers on in-store, prior to buying, as it is important to get the fit of footwear right.¹⁷ Retailers are also increasingly investing in their in-store environments in order to attract and engage consumers, including through promotional in-store experiences such as DJ events and the use of technology in their stores.¹⁸
- 2.12 Online is the fastest growing channel in the sector and a key driver of growth,¹⁹ with online sales worth around £1.7 billion in 2018. This is due to a combination of the growth of online-only retailers, such as ASOS, and in-store retailers growing online sales.²⁰ However, online sales comprise about a third of sales in this sector in the UK.
- 2.13 The importance of the online channel in the sports-inspired casualwear sector may also be partly reflective of its core demographic, which is more weighted towards young consumers (16-24 year olds) than the overall apparel and footwear sectors. Across all markets, younger consumers are the most likely

¹⁶ Berenberg, Sports Retail, page 16.

¹⁷ Mintel Sports & Outdoor Fashion - UK - December 2018, page 82.

¹⁸ GlobalData, The UK Sportswear Market 2018-2023, page 10. For example, the report states that 'store staff need to be clued up on the latest trends and products, and understand shopper needs' and that sportswear retailers are 'introducing events instore such as classes or one-off sessions with trainers to encourage return visits'.

¹⁹ GlobalData, The UK Sportswear Market 2018-2023, page 12 and 18.

²⁰ GlobalData, Clothing & Footwear Retailing in the UK, Market Shares, Summary and Forecasts to 2021, page 29. A number of UK sportswear retailers offer an online service. The range of products offered is generally the same as products sold in-store (if not wider), as is the price of individual products.

to shop online.²¹ The ONS reports that clothing or sports goods are the most likely products to be purchased online.²²

Importance of brands and access to products

- 2.14 Brands are important to consumers of sports-inspired casual products, and particularly for younger consumers in this sector.²³ In the UK sportswear market, Nike and adidas are the two biggest brands, particularly for footwear, with estimated combined market shares of around 53% of sports footwear and around 18% of sports apparel.²⁴ Based on data of retailers' revenues split by brand in 2018, Nike and adidas have a large combined share in the UK of [X]% in sports-inspired casual footwear ([X]% and [X]%, respectively) and [X]% in sports-inspired casual apparel ([X]% and [X]%, respectively). We therefore refer to Nike and adidas as 'the key suppliers', throughout this document. There is also a range of smaller brands in this sector including Vans, Puma, Under Armour and The North Face. Suppliers of branded products therefore have a critical role in shaping and driving consumer demand in the sector.
- 2.15 Suppliers offer a range of branded products across a range of styles and price points. Access to branded products, particularly higher-tier or exclusive products (including 'top-of-the-range' limited range products) from suppliers such as Nike and adidas, is therefore an important competitive parameter in this sector. Multi-brand retailers are generally seeking greater access to these types of products to help differentiate their offer and position their proposition as unique. This helps to attract and retain consumers, and to build the retailer's brand and reputation.²⁵ The value placed on branded products by consumers and as a result, multi-brand retailers, has meant that suppliers of these products have an influential position in the sector.

Growth in DTC sales

- 2.16 Suppliers of branded products, particularly Nike and adidas, but also others such as Puma and Under Armour, are expanding their own retail DTC

²¹ 97% of all 16-24 year olds have shopped online in the last 12 months, [ONS, 'Internet access – households and individuals', Table 12.](#)

²² 60% of all adults have bought clothing or sports goods online in the last 12 months, [ONS, 'Internet access – households and individuals', Table 15.](#)

²³ Research by GlobalData shows that '52.1% of sports clothing shoppers and 58.2% of sports footwear shoppers agree that the brand is important to them when purchasing an item, with the figure rising among younger consumers'. GlobalData, The UK Sportswear Market 2018-2023.

²⁴ [Berensberg Sports Retail](#), page 14. 'Sportswear' covers sports-inspired, performance and outdoor products. We note that the market share estimate presented for Nike excludes its other brands ie Converse, and similarly for adidas, excludes Reebok.

²⁵ GlobalData, The UK Sportswear Market 2018-2023, page 10.

offering, particularly online but also through their own stores. Suppliers have increased the proportion their sales made through DTC channels and this growth is forecast to continue.

- 2.17 While suppliers' DTC offering is growing, the wholesale distribution market remains large and as a result, multi-brand retailers continue to play a critical role in the marketplace. We also note that some suppliers are shifting how they allocate their products globally, with their 'best' product allocations going to key differentiated strategic retailers, which over time may reduce the number of overall retailers that they supply.²⁶
- 2.18 We have considered the impact of DTC further in chapters 8 and 9 as part of our competitive assessment of horizontal unilateral effects.

²⁶ For example, reports about Nike consolidating its retailer base as reported on [in 2017](#) and [more recently](#) in 2019.

3. The Parties, the Merger and its rationale

3.1 In this chapter we have provided an overview of the Parties, the Merger and the Parties' rationale for the Merger.

The Parties

Pentland

3.2 Pentland acquired 57% of the shares of JD Sports in 2005 and currently holds 55%.²⁷ Pentland is a privately-owned global group with wholesale and retail businesses supplying branded apparel and footwear products in the areas of sports, fashion and outdoor.²⁸ The vast majority of sales from Pentland's brands are at a wholesale level²⁹ to retailers including JD Sports³⁰ and Footasylum.³¹

3.3 The relationship between Pentland and JD Sports is governed by an arms-length 'Relationship Agreement' dated 30 October 2014. This agreement requires that Pentland does not take any action which precludes or inhibits any member of JD Sports from carrying on its business independently of any member of Pentland.³²

JD Sports

Background

3.4 JD Sports was established in 1981 and listed on the London Stock Exchange in 1996.³³ It is an international³⁴ multi-brand multi-channel retailer of sports, fashion and outdoor products.³⁵

²⁷ At the time of the reference, JD Sports was 57.47% owned by Pentland Group plc, which was incorporated in the UK and was also the parent company of the Pentland group of businesses, including JD Sports. Pentland Group plc had a corporate restructuring on 21 November 2019, which resulted in Pentland Group Limited becoming the new ultimate parent company. References to Pentland means Pentland Group plc prior to 21 November 2019 and Pentland Group Limited from 21 November 2019 onwards. On 11 December 2019, Pentland sold a 2.47% stake in JD Sports and, as a result, Pentland now owns 55.0% of JD Sports.

²⁸ Pentland, *Financial Accounts 2018*, page 2.

²⁹ The majority (more than [%], with the exception of [%], [%] and [%], [%]) of sales from Pentland's brands are made at the wholesale level.

³⁰ [%]

³¹ [%]

³² [%]

³³ See: [JD Sports website](#).

³⁴ JD Sports revenue in the UK accounts for [%] of global revenue. Prior to JD Sports' acquisition of Finish Line Inc. in 2018, UK sales accounted for [%] of JD Sports' global revenue.

³⁵ See: [JD Sports website](#).

- 3.5 JD Sports' core fasciae that are active in the retail supply of casual sportswear and fashionwear are: JD Sports (375 stores in the UK and online), Size? (25 stores in the UK and online), Footpatrol (one store in London and online), Tessuti (which includes Scotts, Choice, Xile, Infinities – 67 stores in the UK and online), Hip (two stores in the UK and online) and Activinstinct (online-only and operating on an arms' length basis).
- 3.6 JD Sports stocks its own-brand labels including McKenzie, Sonneti, Status, Pink Soda, Supply & Demand and The Duffer of St George, as well as having third party brand partnerships. JD Sports also operates an 'Outdoor' division,³⁶ which supplies outdoor clothing, footwear and equipment in the UK and is not focused on sports-inspired casual products.

Financial information

- 3.7 JD Sports' global revenue for the financial year 2018/19 was £4.7 billion and the total revenue in the UK was £2.1 billion. The UK accounts for the largest part of JD Sports' total revenues (45%) followed by the rest of Europe (29%), US (21%), and the rest of the world (5%).³⁷ JD Sports' financial performance in relation to the UK retail supply of sports-inspired casualwear (split between apparel and footwear) is shown in Table 3.1.

Table 3.1: JD Sports' UK retail supply of sports-inspired casualwear revenue and cost

	£m							
	FY 2015/16		FY 2016/17		FY 2017/18		FY 2018/19	
	Store	Online	Store	Online	Store	Online	Store	Online
Footwear	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Apparel	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Other	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Segment revenue	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Footwear gross profit	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Apparel gross profit	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Other gross profit	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]
Total segment gross profit	[x]	[x]	[x]	[x]	[x]	[x]	[x]	[x]

Note (i) Functional sport categories (regardless of brand), accessories and concessions are included in 'Other'; (ii) JD Sports moved to a new system to manage its financial information and therefore, data prior to February 2015 is currently inaccessible.

- 3.8 JD Sports' total revenue increased by a compound annual growth rate (CAGR) of [x]% over the last four years. The growth in its online revenue was [x] times the growth in its in-store revenue. JD Sports' apparel revenue

³⁶ Comprising the following fasciae: Blacks, Millets, Ultimate Outdoors, Tiso Group, Go Outdoors and George Fisher.

³⁷ JD Sports, *Annual report 2018*.

has increased by a CAGR of [X]% over the last four years and its footwear revenue has increased by a CAGR of [X]% over the same period. [X].

- 3.9 JD Sports' overall average gross margin³⁸ was [X]% over the last four years. [X]. [X].

Footasylum

Background

- 3.10 Footasylum was formed in 2005 and is a retailer of fashionwear and sports casualwear mainly in the UK.³⁹ Its shares were listed on the Alternative Investment Market (AIM) in November 2017.⁴⁰
- 3.11 Footasylum owns and operates 70 stores in the UK, including one store under the Drome Men fascia and another under the Seven fascia. Drome focuses on higher end menswear, while Seven focuses on sports apparel and footwear, and contemporary fashionwear.⁴¹ Footasylum has dedicated online stores for each of the three fasciae: Footasylum; Drome; and Seven.
- 3.12 Footasylum sells third party sports casual fashion apparel and footwear brands, as well as a number of own-brands such as Kings Will Dream, allesandro zavetti, Zavetti, Zavetti Sport, Glorious Gangsta, Asylum, footasylum, Forena, Métissier, Monterrains, Projekts NYC and Loyalti. In 2017, Footasylum started to supply its own-brands in the wholesale channel, which currently accounts for 2% of Footasylum's total revenue.⁴²
- 3.13 In 2012, Footasylum started to support developing third party 'Bedroom Brands',⁴³ [X]. Some of these Bedroom Brands are supplied in other retailers.

Financial information

- 3.14 Footasylum's financial performance in the retail supply of sports-inspired casualwear (split between footwear and apparel) is shown in Table 3.2.

³⁸ Gross margin (%) is calculated as gross profit divided by revenue.

³⁹ UK revenues account for around [X]% of global revenues (including the rest of Europe and the rest of the world). Footasylum's financial accounts 2018/19, page 24.

⁴⁰ [The Financial Times, JD Sports founders' Footasylum chain valued at £171m in IPO. \(accessed on 09 January 2020\).](#)

⁴¹ [Footasylum, Annual Report and Accounts 2018, page 15.](#)

⁴² Top three wholesale partners based on revenue in 2019 are: [X].

⁴³ Bedroom Brands are start-up brands created on a limited budget and marketed on social media.

Table 3.2: Footasylum's retail supply of sports-inspired casualwear revenue and cost

£m												
	FY 2014/15		FY 2015/16		FY 2016/17		FY 2017/18			FY 2018/19		
	Store	Online	Store	Online	Store	Online	Store	Online	Whole-sale	Store	Online	Whole-sale
<i>Footwear</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Apparel</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Other</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Segment revenue	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Footwear gross profit</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Apparel gross profit</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
<i>Other gross profit</i>	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Segment gross profit	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Total gross profit	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Notes: (i) 'Other' contains accessories and any footwear/apparel which are not considered sports-inspired casual (ie performance wear); (ii) for the purposes of limiting this response to sports-inspired casualwear only, Footasylum has removed all denim products from the apparel category and all products falling within the Birkenstock, Dr Martens, Forena, Kickers and UGG brands from the footwear category.

3.15 Footasylum's total revenue increased by a CAGR of [X]% over the last five years as Footasylum increased its number of stores from [X] to [X]. The revenue per store increased from £[X] in 2015/16 to £[X] in 2018/19. The [X].

3.16 The retail sales for apparel (excluding wholesale) accounted for [X]% of Footasylum's retail revenue in 2015/16, with footwear accounting for the remaining [X]%. In 2018/19, this proportion increased to [X]%, with footwear accounting for [X]% and wholesale [X]% of the overall retail revenue.

3.17 [X].

The Merger

3.18 The Merger was carried out by way of a public offer made by JD Sports for the entire issued ordinary share capital of Footasylum on 18 March 2019.

3.19 On 12 April 2019, JD Sports completed the acquisition⁴⁴ of Footasylum for approximately £90 million. Footasylum's shares were delisted from trading on AIM on 16 May 2019. Under the terms of the transaction, on 5 June 2019 JD Sports acquired the entire issued ordinary share capital of Footasylum as well as its associated assets and liabilities.

⁴⁴ On 12 April 2019, JD Sports announced that it had received acceptances representing around [X]% of the Footasylum shares and declared that, as a result, the offer had become unconditional and it had reached the threshold required to commence the compulsory acquisition process for the remaining shares.

3.20 The Merger is not subject to review by any other competition authority.

Rationale for the Merger

JD Sports

3.21 JD Sports told us that the Parties' activities were complementary as it viewed Footasylum's brand as more fashion-led (with a higher percentage of sales of denim and T-shirts) than JD Sports' offering (which was more sports-led, for example football boots and other sports performance products).

3.22 JD Sports also told us that the Merger presented it with an opportunity to:

(a) [REDACTED];

(b) [REDACTED]; and

(c) [REDACTED].

3.23 JD Sports stated that its intention had been to maintain a separate operational management structure within Footasylum and that it would also:⁴⁵

(a) maintain Footasylum's differentiated brand mix, product range and its multi-channel proposition; and

(b) optimise the efficiency of the Merged Entity's combined operations, by consolidating certain central functions and leveraging potential economies of scale.

Footasylum

3.24 Footasylum told us that due to its precarious financial position and retail trading challenges, the acquisition by JD Sports would secure its stores and online presence.

3.25 Footasylum also told us that:

(a) [REDACTED];⁴⁶

(b) [REDACTED];

(c) [REDACTED]; and

⁴⁵ [Public offer document](#), page 17.

⁴⁶ [REDACTED].

(d) [REDACTED].

4. Relevant merger situation

Introduction

- 4.1 As described in chapter 1, pursuant to section 35 of the Act and our terms of reference (see Appendix A) we are required to decide whether a relevant merger situation has been created.
- 4.2 A relevant merger situation is created if:
- (a) two or more enterprises cease to be distinct; and
 - (b) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the 'turnover test') or the 'share of supply test' is satisfied.⁴⁷

Enterprises ceasing to be distinct

Enterprises

- 4.3 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.⁴⁸
- 4.4 JD Sports and Footasylum are each active in the retail supply of sports-inspired casual products in the UK, both in-store and online. We are satisfied that each of JD Sports and Footasylum is a 'business' within the meaning of the Act and that, accordingly, the activities of JD Sports and Footasylum are 'enterprises' for the purposes of the Act.

Ceasing to be distinct

- 4.5 The Act provides that two enterprises 'cease to be distinct' if they are brought under common ownership or common control.⁴⁹

⁴⁷ Section 23 of the Act. The 'share of supply' test is met where the result of the enterprises ceasing to be distinct creates or enhances a share of supply of 25% or more in respect of goods or services of any description which are supplied in the UK, or a substantial part of the UK.

⁴⁸ A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'. Sections 129(1) and (3) of the Act.

⁴⁹ Section 26 of the Act.

- 4.6 As a result of the Merger, JD Sports acquired the entire issued ordinary share capital of Footasylum. Accordingly, we are satisfied that both businesses have ceased to be distinct prior to the date on which the reference was made.
- 4.7 The enterprises must have ceased to be distinct either not more than four months before the date on which the reference was made or, where the merger took place without having been made public and without the CMA being informed of it, four months from the time that material facts are made public or the time the CMA is told of material facts, whichever is earlier.⁵⁰ The four month period may be extended under section 25 of the Act.
- 4.8 The Merger completed on 12 April 2019. The statutory deadline to refer was 8 October 2019, following an extension under sections 25(1) and 25(2) of the Act. The Merger was referred to a phase 2 investigation on Tuesday 1 October 2019. We are therefore satisfied the reference was made within the statutory time limit.

Turnover test

- 4.9 The turnover test is satisfied where the UK turnover of the enterprise being acquired exceeds £70 million.
- 4.10 The turnover of JD Sports in the financial year ending 2 February 2019 was £[~~70~~] in the UK. The turnover of Footasylum for the financial year ending in 2019 was £227.4 million in the UK.
- 4.11 We are therefore satisfied that the value of the annual UK turnover of Footasylum exceeds £70 million and that the turnover test is met. We are not required to consider whether the share of supply test is also met.

Provisional conclusion

- 4.12 In light of the above assessment, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation. As a result, we must consider whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.

⁵⁰ Section 24 of the Act.

5. Counterfactual

Introduction

- 5.1 The assessment as to whether the creation of a relevant merger situation has resulted or may be expected to result in an SLC involves a comparison of the prospects for competition with the Merger against the competitive situation that would exist in the absence of the Merger. This situation, referred to as the 'counterfactual', is the benchmark against which we have assessed the competitive effects of the Merger.
- 5.2 In this chapter we have set out:
- (a) the CMA's framework for assessing the counterfactual;
 - (b) the Parties' views on the appropriate counterfactual; and
 - (c) our assessment and provisional conclusion on the counterfactual.

The CMA's counterfactual assessment framework

- 5.3 As part of its counterfactual assessment, the CMA may examine several likely scenarios, one of which may be the continuation of the pre-merger situation. The CMA will select the most likely of these, based on the facts of the case, as the counterfactual scenario.⁵¹ It will incorporate into the counterfactual only those aspects of scenarios that appear likely, based on the facts available to it and the extent of its ability to foresee future developments.⁵² The foreseeable period can sometimes be relatively short.⁵³ However, even if an event or its consequences are not sufficiently certain to include in the counterfactual, they may be considered in the context of the competitive assessment.⁵⁴
- 5.4 The CMA seeks to avoid including into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.⁵⁵ Where we consider that the choice between two or more counterfactual

⁵¹ [CMA Guidance, paragraph 4.3.6](#). In contrast, at phase 1, the effect of the merger is compared with what is considered to be the 'most competitive' counterfactual (provided that this situation is considered to be a realistic prospect).

⁵² [CMA Guidance, paragraph 4.3.6](#).

⁵³ [CMA Guidance, paragraph 4.3.6](#).

⁵⁴ [CMA Guidance, paragraph 4.3.2](#).

⁵⁵ [CMA Guidance, paragraphs 4.3.2 and 4.3.6](#).

scenarios will make a material difference to the competitive assessment, the CMA will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.⁵⁶

- 5.5 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the competitive conditions prevailing at the time the merger occurred. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.⁵⁷

Parties' views on the appropriate counterfactual

- 5.6 The Parties submitted that it was not realistic to assess the Merger on the basis of a static view of competition. The Parties submitted that absent the Merger, Footasylum would have been a 'significantly weakened and less effective competitor'⁵⁸ going forward for two main reasons:

- (a) the impact of certain recent market developments. In particular, the Parties cited that Nike's and adidas's shift towards their DTC channels had resulted in their becoming direct competitors to Footasylum; consumers increasingly buying products online; and high street retailers' expanding athleisure ranges; and
- (b) certain negative repercussions followed on from Footasylum's poor financial performance and worsened financial position in 2018/2019, including: issuing three profit warnings during that period which resulted in a significant decrease in its share price; [REDACTED];⁵⁹ [REDACTED];⁶⁰ [REDACTED].⁶¹

- 5.7 [REDACTED].

- 5.8 The Parties' external economic advisers also submitted a counterfactual paper for the purposes of this inquiry. The paper presented a 'downside scenario' based on a budget forecast prepared by Footasylum's management for Footasylum's financial performance in 2019/20 [REDACTED]. It sets out the [REDACTED]. The paper states that [REDACTED].⁶² The paper set out [REDACTED]. It stated that this [REDACTED].

- 5.9 JD Sports told us that [REDACTED]. It added that [REDACTED].

⁵⁶ CMA Guidance, paragraph 4.3.6.

⁵⁷ CMA Guidance, paragraph 4.3.4.

⁵⁸ JD Sports, *Initial Phase 2 Submission*, November 2019, Paragraph 347

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

Our assessment of the appropriate counterfactual

- 5.10 This section covers our assessment of the Parties' arguments. A summary of the evidence submitted to us on these points is set out in Appendix B.
- 5.11 The Parties submitted that, absent the Merger, Footasylum would not have exited the market and that the conditions for a failing firm counterfactual were not met.⁶³ We have not seen evidence to suggest a contrary outcome is plausible. Consequently, we have not considered a failing firm counterfactual.
- 5.12 The Parties submitted that suppliers such as [X] would reduce the products available to retailers outside the DTC channel, and noted the growth of online-only and non-specialised retailers. While we note that Nike's and adidas's DTC channels have been growing and each has made changes in its wholesale distribution strategy, we consider that this would have taken place under both the counterfactual and the post-Merger scenarios such that it does not support an alternative counterfactual scenario. We have explored further the growth of DTC and other market developments, and how these might affect competition, in our competitive assessments in chapters 8 and 9.
- 5.13 The Parties submitted that Footasylum would be a significantly weaker competitor absent the Merger, [X].
- 5.14 As part of our assessment we have considered whether Footasylum's financial performance in the period prior to the Merger, and its financial position at the time of the Merger, would have impacted its ability to compete using its existing store portfolio and online channel. In this regard, we have identified two areas for consideration:
- (a) the impact of Footasylum's financial position on its ability to compete; and
 - (b) the downside scenario presented to us by the Parties' external advisers.
- 5.15 We have set out our assessment of each of these areas in turn.

Impact of Footasylum's financial position on its ability to compete

- 5.16 We have considered the evidence concerning Footasylum's financial position, its financial performance, cashflows, ability to borrow and its relationships with key suppliers and lenders, and whether these would have impacted its ability to compete absent the Merger.

⁶³ JD Sports, *Initial Phase 2 Submission*, November 2019, paragraph 314.

- 5.17 Footasylum's in-store revenue for 2018/19 had [REDACTED] but its online revenue was [REDACTED] compared to the previous year.⁶⁴ Therefore, we have found that overall Footasylum's revenue had [REDACTED]. However, its profitability had [REDACTED], with EBITDA⁶⁵ before exceptional cost [REDACTED].
- 5.18 Footasylum had taken some steps in the months before the Merger [REDACTED]. We examined evidence from Footasylum and third parties to determine whether the effect of [REDACTED] would have been likely to persist beyond the short term, or whether Footasylum's financial performance would have improved such that it would have been able to [REDACTED] to enhance its competitiveness.
- 5.19 Footasylum's EBITDA had been steadily growing year-on-year prior to 2018/2019 (see Table 1 in Appendix B). We consider that the decline in Footasylum's 2018/19 EBITDA performance can largely be explained by a number of specific events and non-recurring costs. In particular, EBITDA for 2018/19 had reduced due to large [REDACTED], warehouse migration (£0.6 million) and restructuring cost (£0.4 million). These costs were exceptionally high compared to previous years.⁶⁶
- 5.20 In relation to the [REDACTED], Footasylum submitted that it had [REDACTED] that had [REDACTED] on its profitability for the 2018/19 financial year. We understand that these [REDACTED] related to certain [REDACTED]. This appears to have been a largely one-off issue, although we recognise that there are continued risks involved in [REDACTED].
- 5.21 In this case, we understand that this issue was resolved, as Footasylum told us that it had taken [REDACTED] regarding the [REDACTED] after a difficult financial year.
- 5.22 Third party analysts also considered that these problems had been resolved. On 8 January 2019, Peel Hunt stated:
- [REDACTED]
- 5.23 On the same date, Liberum stated: [REDACTED].
- 5.24 While Footasylum's [REDACTED], this was not viewed as a cause for concern by third party analysts. For instance, Peel Hunt stated that this was [REDACTED]. Liberum also recognised that Footasylum had made '[REDACTED]'.
- 5.25 Footasylum management's central forecast submitted to its Board in February 2019 showed a [REDACTED] for the following financial year 2019/20 (see Table 5.1).

⁶⁴ In-store revenue [REDACTED]% and online revenue [REDACTED]% for 2018/19 compared to the previous year.

⁶⁵ Earnings before interest, taxes, depreciation and amortisation.

⁶⁶ [REDACTED]

Table 5.1: Footasylum management’s central forecast for 2019/20 (prepared in February 2019)

	£'m	
	FY 2018/19	FY 2019/20
Total revenue	[X]	[X]
Cost of sales	[X]	[X]
Gross Profit	[X]	[X]
Operating cost	[X]	[X]
EBITDA	[X]	[X]
Depreciation	[X]	[X]
SBP charge	[X]	[X]
Exceptional	[X]	[X]
EBIT	[X]	[X]
CAPEX	[X]	[X]
<i>GP margin (%)</i>	[X]	[X]
<i>EBITDA margin (%)</i>	[X]	[X]

5.26 [X], the projections made by Peel Hunt and Liberum dated 8 January 2019 (set out in Table 5.2 and Table 5.3) show that Footasylum was on course to grow its annual revenue to between £[X] and £[X] and EBITDA to around £[X] over the next two financial years.

Table 5.2: Footasylum’s third party analyst (Peel Hunt) projections

[X]

Table 5.3: Footasylum’s third party analyst (Liberum) projections

[X]

5.27 While it is not clear how [X] might have affected Footasylum’s consumer offer and competitiveness, based on the above, [X] and third party analyst reports show increased revenues and EBITDA for the period after the Merger. These forecasts showing improved performance would have meant, in our view, that [X] would not have been sustained and persisted beyond the short term. It is therefore our provisional view that the most likely scenario is that [X] would not have materially affected Footasylum’s competitive strength, other than potentially in the short term.

Impact on cashflow and ability to borrow

5.28 Footasylum had issued three profit warnings to the market in the financial year prior to the Merger and its share price had dropped significantly. We therefore consider that the low market expectations of Footasylum’s performance were likely to constrain its ability to borrow in the short term.

5.29 Footasylum estimated that the [REDACTED]. While we recognise that this additional amount would have had some impact on Footasylum's cashflow in the short term, in our view this would not have undermined Footasylum's overall financial position and viability.

Impact on relationships with suppliers

5.30 Footasylum had previously invested significantly in its store portfolio and online to meet expectations of its main suppliers to maintain and increase its access to 'must have' products.

5.31 We have seen evidence [REDACTED]. However, we note that [REDACTED].⁶⁷

5.32 We have not seen evidence that [REDACTED] suppliers had changed their supply and payment terms for Footasylum. [REDACTED] told us that while [REDACTED] were aware of Footasylum's profit warnings, [REDACTED] were not at that stage concerned about its overall financial position because historically Footasylum had had a good credit history [REDACTED]. One supplier ([REDACTED]) offered support ([REDACTED]) to Footasylum management to help improve its sales.

5.33 We recognise that had Footasylum continued to have sustained financial problems, this may have reduced its investment in its store portfolio. Any such reduction could have negatively impacted its relationship with its suppliers and potentially led to a decrease in product access and/or volume allocations.⁶⁸

5.34 However, as set out in paragraph 5.27, we do not consider this to be the most likely outcome and in our provisional view, any reduction in competitiveness caused by [REDACTED] would not have been material and would not likely have persisted beyond the short term. As such, we would expect that under the most likely scenario, Footasylum's store-level investment would have [REDACTED] once its financial performance stabilised.

5.35 Therefore, in light of each of the points above, we do not consider there is sufficient evidence that in the foreseeable future, Footasylum's main suppliers would have withdrawn access or support from it.

Impact on relationships with lenders

5.36 We note the [REDACTED], and the submission from Footasylum on this matter.⁶⁹ However, we also note that minutes of a Board meeting [REDACTED] stated that '[REDACTED].'

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ Evidence from Footasylum on this issue is summarised in Appendix B.

5.37 Further, Footasylum management's central forecast for 2019/20 showed that the [REDACTED]. Therefore, although we recognise that there were concerns in this regard, the evidence shows that under its central forecast, Footasylum [REDACTED]. We also note that, were trading conditions to be less favourable than forecast, Footasylum's management would have been able to take mitigating actions, such as [REDACTED].

5.38 [REDACTED]. However, we also saw evidence that its primary lender [REDACTED]:

(a) Footasylum's primary lender [REDACTED]. Moreover, we note that Footasylum had also been able to [REDACTED]; and

(b) [REDACTED].⁷⁰

Provisional view on the impact of Footasylum's financial position on its ability to compete

5.39 Based on the above, we consider it is likely that, absent the Merger, Footasylum would have continued to trade in line with its management's central forecast and [REDACTED], it would have made a significant effort to '[REDACTED]'.

5.40 We also consider that absent the Merger, Footasylum would have been likely to have continued to take steps to improve and stabilise its business performance, [REDACTED], without materially affecting its competitive position. This is in line with evidence showing [REDACTED].

5.41 We consider that while Footasylum's [REDACTED] would have resulted in Footasylum [REDACTED], this would only have been necessary in the short term. In any case, even if Footasylum had [REDACTED], we consider it likely that Footasylum would have still been able to compete effectively using its existing store footprint and online offering. Once its financial position had stabilised in the short term ([REDACTED]), we would expect Footasylum thereafter to have sought to continue to expand. We would also expect Footasylum's [REDACTED] once its financial performance had stabilised.

The Parties' downside scenario

5.42 As mentioned in paragraph 5.8, the Parties submitted a paper from their external economic advisers on a 'plausible' downside scenario absent the Merger involving Footasylum [REDACTED]. The external advisers' view of the [REDACTED].

⁷⁰ [REDACTED].

5.43 The paper took [REDACTED]:

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED]; and

(d) [REDACTED].

5.44 Although there is a possibility that this scenario would have occurred, we do not consider that this would have been the most likely scenario for a number of reasons:

(a) we consider that the assumptions underlying this scenario are very pessimistic, even for a downside scenario. In particular, the paper does not provide a rationale or evidence for why Footasylum's management would have failed to [REDACTED]. The assumption that margins would [REDACTED] does not take into account the largely one-off causes of the fall in Footasylum's margin in 2018/19;

(b) further, we consider the assumed revenue [REDACTED] to be very conservative, given the historic and forecast growth of the sector, and Footasylum's historic trends in online sales growth; and

(c) we consider it highly unlikely that all of the assumptions would have occurred together and that Footasylum, despite the combination of adverse circumstances, would not have taken *any* mitigating actions.

5.45 On that basis, we have placed very limited weight on this evidence and our provisional view is that a counterfactual involving Footasylum [REDACTED] is unlikely.

Provisional conclusion

5.46 Prior to 2018/2019, Footasylum had grown successfully since its formation in 2005 to become a significant national competitor. The key issue we have considered in this chapter is whether, absent the Merger, Footasylum would have been able to rebound from the poor performance and difficult trading conditions it faced in 2018/2019 sufficiently to remain an effective competitor.

5.47 In reaching our provisional conclusion on the most likely counterfactual, we have considered evidence submitted by the Parties relating to Footasylum's financial position at the time of the Merger and its financial performance in 2018/2019, a period in which Footasylum's profit margins had decreased [REDACTED], and its share price had fallen significantly.

- 5.48 We have considered whether Footasylum's competitive position may have been impacted by its financial issues around the time of the Merger, and provisionally find that:
- (a) Footasylum's profit margins had decreased [redacted] in 2018/19. [redacted]. Although this may have had some impact on its competitiveness, we do not consider this effect would have been material or sustained beyond the short term;
 - (b) Footasylum's share price had decreased significantly and this had constrained its ability to raise additional finance and therefore make investments in its business in the short term until its position had improved; and
 - (c) [redacted]. However, we do not consider that this would have had a material effect on Footasylum's overall competitiveness.

5.49 We also provisionally find that Footasylum would have remained an effective competitor despite its financial issues, in particular based on the following evidence:

- (a) Footasylum's financial difficulties during 2018/19 were largely one-off in nature and it had taken steps to mitigate them;
- (b) the central forecast prepared by Footasylum's management around the time of the Merger showed that it expected continued access [redacted], to operate [redacted], and [redacted];
- (c) third party analysts had [redacted] forecast increasing revenues and EBITDA for Footasylum;
- (d) [redacted]; and
- (e) Footasylum's [redacted] told us that [redacted] were not concerned about Footasylum's overall financial position and therefore we do not consider that in the foreseeable future [redacted] would have withdrawn access or support.

5.50 We have placed more weight on the central forecast prepared by Footasylum's management than the downside scenario submitted by the Parties' external economic advisers and consider that it represents a more likely outcome than the downside scenario, in particular for the following reasons:

- (a) the downside scenario relies on very pessimistic assumptions. While it is possible that this scenario would have occurred, we think this is an

unlikely outcome as set out in paragraph 5.44. The assumptions made in the central forecast seem to us to be more reasonable, and we note that the forecast is largely consistent with third party analyst reports; and

- (b) the downside scenario was prepared by the Parties' external economic advisers specifically for the purpose of this inquiry. By contrast, the central forecast was prepared by Footasylum's management in the ordinary course of business around the time of the Merger.

5.51 As stated in paragraph 5.3, the CMA seeks to select the most likely counterfactual scenario. Overall, we recognise that Footasylum had been in a weaker financial position around the time of the Merger which may have had some impact on its competitiveness in the short term, while it was recovering from this position. However, we provisionally conclude that, on the balance of the evidence set out above and taken in the round, the most likely counterfactual is one in which Footasylum would have continued to compete effectively absent the Merger.

6. Overview of our approach and the evidence gathered

6.1 In this chapter we have set out our approach to assessing the Merger and the evidence we have gathered during our inquiry to inform this assessment.

Our approach

6.2 We have assessed a number of areas in forming our provisional decision. We briefly outline these below; further details on each is set out in subsequent chapters.

Market definition

6.3 As set out in CMA Guidance, we have defined the market within which the Merger may give rise to an SLC (the relevant market). We have used that market definition as a framework for our analysis of the competitive effects of the Merger. We note that while market definition is a useful analytical tool, it is not an end in itself, and identifying the relevant market involves an element of judgement.⁷¹

6.4 The relevant market(s) contain the most significant alternatives available to the customers of the Parties and includes the most relevant constraints on the behaviour of the Parties.⁷² Therefore in defining the relevant market(s), we have considered the retail products which both of the Parties supply (footwear and apparel), the distribution channels they are sold in (ie in-store and online), and the geographic basis of the Parties' product offerings.

6.5 We have set out our assessment of market definition in chapter 7.

Theories of harm

6.6 Theories of harm describe the possible ways in which an SLC may be expected to result from a merger.

Horizontal unilateral effects theories of harm

6.7 As set out in our Issues Statement, we have assessed whether there are any horizontal unilateral effects arising from the Merger.⁷³ Horizontal unilateral effects may arise when one business merges with a competitor that previously

⁷¹ CMA Guidance paragraph 5.2.2

⁷² CMA Guidance, paragraph 5.2.1.

⁷³ CMA, *Issues Statement*, paragraph 27.

provided a competitive constraint, allowing the merged entity to worsen its offering profitably or not improve it as much as it would otherwise (for example by increasing prices, and/or reducing quality, range or service levels – collectively referred to as PQRS).⁷⁴

6.8 Horizontal unilateral effects are more likely when the merging parties are close competitors. After the merger, it is less costly for the merged entity to worsen or not improve its offering because it will recoup the profit on recaptured sales from those customers that switch to the other merging party and which would have been lost absent the merger.⁷⁵

6.9 We have considered whether an SLC may arise as a result of horizontal unilateral effects in footwear and apparel in chapters 8 and 9 respectively.

Coordinated effects theory of harm

6.10 During the course of our inquiry, we have received submissions from some third parties raising concerns about coordination, to varying degrees of detail.

6.11 Coordinated effects may arise when businesses operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate or align their behaviour to limit their rivalry.⁷⁶ Such coordination may take different forms: explicit, achieved through communication and agreement between the parties involved; or tacit, which does not require any direct contact between businesses and is not based on any formal arrangements or direct communications.

6.12 Under such theories, the harm arises as a result of the merged entity and others in the market jointly aligning their behaviour. Our focus has been on whether the Merger would make it easier for coordination which limits rivalry to take place and therefore gives rise to an SLC.

6.13 We have considered whether an SLC may arise as a result of a coordinated effects theory of harm in chapter 10.⁷⁷

Countervailing factors

6.14 We have considered whether there are any countervailing factors which are likely to prevent any SLC that we may have found. Specifically, we looked at whether entry by new retailers or expansion by retailers would be timely, likely

⁷⁴ CMA Guidance, from paragraphs 5.4.1.

⁷⁵ CMA Guidance, from paragraphs 5.4.8.

⁷⁶ CMA Guidance, from paragraphs 5.5.1.

⁷⁷ We note that this theory of harm has been considered after publication of our Issues Statement.

and sufficient to prevent any SLC. We have also considered whether the Merger would result in any efficiencies.

6.15 We have set out our assessment of countervailing factors in chapter 11.

Evidence gathered

6.16 We have gathered and taken account of a large range of evidence in our assessment. We have considered the views of the Parties and third parties, conducted two surveys of the Parties' customers (in-store and online), analysed the impact of retailer store entry and exit and reviewed an extensive number of internal documents from the Parties and third parties. We have not relied on any one piece of evidence but assessed all of this evidence in the round to inform our provisional decision. We set out briefly here the different pieces of evidence we have considered. Further details are provided in subsequent chapters, as we have drawn on this evidence in our assessment.

6.17 The Parties submitted points on the evidence we have considered to inform our competitive assessments, including on our surveys. We set out these submissions and our assessment in subsequent chapters.

Evidence from the Parties

6.18 We have considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information during phase 2, the Main Party Hearings and other phase 2 submissions.

6.19 We have gathered a large volume of internal documents and then used a targeted approach to do a detailed in-depth review of over 2,500 relevant internal documents from the Parties. The CMA often uses such documents to inform its competitive assessment. They not only demonstrate levels of monitoring but also provide evidence on strategic decisions and competitive responses.

6.20 We have also gathered financial data for the Parties' individual stores, which we used to assess the impact from entry or exit of other retailers' stores on the Parties' performance (see Appendix C for further details).

Evidence from third parties

6.21 We have gathered evidence and views on the nature of competition from a range of third parties, including through submissions, hearings, and requests for information including those issued under our formal powers.

6.22 We received responses to our information requests from three sports-led retailers, three footwear retailers, three high street fashion retailers, nine DTC retailers (covering their views as both retailers and suppliers), three online-only retailers and two department store retailers.⁷⁸ We also requested internal documents using our formal powers from several third parties related to their business strategy and plans in the relevant markets.

Surveys and GUPPIs

6.23 The views of consumers, their behaviour and potential future responses to the Merged Entity's offering are important evidence for our investigation. We therefore commissioned two surveys - a store exit survey and an online survey of the Parties' customers - to help assess consumer decision-making, closeness of competition and competitive constraints. In particular, the surveys focused on shopping behaviours, attributes of choice and hypothetical diversion behaviour, eg what consumers said they would have done if all of JD Sports' or Footasylum's stores (depending on which they had shopped at) had closed. We describe these briefly here and further detail is set out in separate reports published on our inquiry webpage (see also chapter 8 and Appendix E and F).⁷⁹

6.24 The store exit survey was of customers who had purchased footwear or apparel products in-store at a JD Sports or Footasylum store. The survey was conducted at 28 of JD Sports' stores and 28 of Footasylum's stores during October 2019.⁸⁰ A total of 6,876 interviews was conducted. The stores included in the survey sample reflected different store types across different areas of the UK. We applied weighting to make the results representative of the Parties' entire store estate.⁸¹

6.25 The online survey was of customers who had shopped for footwear or apparel online with JD Sports or Footasylum. It was designed to be representative of the Parties' online businesses, by surveying a sample of orders dispatched for

⁷⁸ See chapter 7 for further description of these broad categorisations.

⁷⁹ See: [DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020*](#) and [DJS Research, *Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020*](#).

⁸⁰ One of the Footasylum stores included in the sample was a Drome fascia store. We have excluded its results from our competitive assessment.

⁸¹ Additionally, the CMA often weights respondents according to the amount they have spent. This may be considered conceptually appropriate as it gives more weight to customers who have spent more and are, therefore, considered more valuable in revenue terms to the Parties. The purpose of weighting is to reduce error of survey estimates. However, while weighting aims to reduce bias, it usually increases sampling error. As a result, an assessment needs to be made of the overall effect of any weighting. We found that spend weighting had very little impact on either survey and therefore did not apply any.

home delivery within the UK⁸² over two weeks in October 2019.⁸³ A total of 3,289 online interviews was completed.

- 6.26 The response rates for the online survey (3.8% amongst JD Sports customers and 4.7% amongst Footasylum customers) were below the 5% minimum threshold that we consider necessary to give full evidential weight to survey results.⁸⁴ We have therefore not given full evidential weight to the online survey results in our competitive assessment. While we have reported the actual results from the online survey, we have considered the overall magnitudes rather than precise figures and considered the extent to which the online survey results are consistent with the store exit survey. We have generally assessed the results alongside other evidence.
- 6.27 We used diversion ratios from our surveys, combined with estimates of margins, to calculate a nationally representative gross upward pricing pressure index (GUPPI) for each of the Parties. The GUPPI is a commonly used measure that aims to capture or score the incentive that the Parties have to increase prices or degrade their offering post-Merger.⁸⁵ We set out further details on our GUPPIs and assessment of these, including the Parties' submissions on GUPPIs, in chapters 8 and 9 (see also Appendix F).

⁸² Home delivery (within the UK) being the largest part of the Parties' online businesses ([~~3~~] % JD Sports; [~~3~~] % Footasylum), compared with click and collect orders.

⁸³ The number of orders during this period was higher for JD Sports than for Footasylum, however it was decided that in the interests of consistency and interpretation of the results across the Parties we would use the same two-week reference period for both Parties and select a random sub-sample for JD Sports. More details of this and data cleaning are in the DJS report on the online survey.

⁸⁴ [CMA, *Good practice in the design and presentation of customer survey evidence in merger cases*, May 2018, section 4.38, page 51.](#)

⁸⁵ The variable margins refer to the difference between revenue and all cost which vary with the volume of goods produced.

7. Market definition

Introduction

- 7.1 In this chapter we have defined the relevant market(s) which will frame the analysis of the competitive effects of the Merger.⁸⁶ In general, the boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁸⁷ We have taken these factors into account in our competitive assessment in chapters 8 and 9.
- 7.2 This Merger is in a sector where the offerings of retailers are highly differentiated. Differentiation typically means that a spectrum of offerings exists that are close but imperfect substitutes; for example retailers may have a wide range of products covering different types of footwear, from trainers to formal shoes. Delineating a relevant market on such a spectrum can be difficult and somewhat artificial, for example it might lead to very narrow markets, such as for a specific trainer type or brand. Therefore, as stated above, the boundaries of the market do not determine the outcome of our competitive assessment in chapters 8 and 9.
- 7.3 This chapter is structured as follows:
- (a) background;
 - (b) general approach to market definition;
 - (c) product market;
 - (i) footwear and apparel;
 - (ii) footwear;
 - (iii) apparel;
 - (d) geographic market; and
 - (e) provisional conclusion.

⁸⁶ CMA Guidance, paragraph 5.2.1.

⁸⁷ CMA Guidance, paragraph 5.2.2.

Background

- 7.4 As set out in chapter 2, the Parties are retailers of footwear and apparel specialising in sports-inspired casualwear (ie sportswear worn as fashionwear rather than for sports performance). They offer ranges of different branded products, including from the two key suppliers of branded footwear, Nike and adidas, and broad ranges of other suppliers' footwear and apparel brands.
- 7.5 The growth in sports-inspired casualwear as a trend is a common feature of the wider fashion industry. Fashion is trend-driven and influenced by marketing, events, designers, social media, celebrities and other factors. Suppliers change their available products, typically seasonally, and retailers can also change, both in terms of their product offering and positioning.
- 7.6 Demand creation appears increasingly to start online through social media, with consumers then having the ability to browse and shop online or in-store. Consumers can also purchase products online and collect and/or return them in-store. Therefore, we have recognised that there is fluidity between how consumers browse, purchase and receive products.
- 7.7 Overall, the fluidity in the sector means that drawing clear distinctions between product types, channels and retailers is likely to be difficult and of limited analytical value, particularly recognising that such distinctions may change over time.

General approach to market definition

- 7.8 The purpose of market definition is to provide a framework for our analysis of the competitive effects of the Merger. Our analysis of competitive effects has looked at the level of competition between the Parties and other retailers.
- 7.9 In practice, the analysis underpinning the market definition and the assessment of competitive effects overlap, with many of the factors being relevant to both. In our assessment of whether the Merger may give rise to an SLC, we have taken into account constraints outside the relevant market(s), and to the extent necessary, segmentation within the relevant market(s), or other ways in which some constraints are more important than others.

- 7.10 The relevant market(s) contain the most significant alternatives available to the customers of the Parties and includes the most relevant constraints on the behaviour of the Parties.⁸⁸
- 7.11 In defining the relevant market, we have looked at two dimensions: a product dimension and a geographic dimension.⁸⁹ The relevant product market is a set of products that consumers consider to be close substitutes, for example in terms of utility, brand or quality. The relevant geographic market is primarily the area in which competition occurs and may be local, regional, national or international.
- 7.12 We have first assessed the relevant product market and then turned to the relevant geographic market.

Product market definition

- 7.13 We have taken the products where the Parties overlap as our starting point for determining the relevant product market.⁹⁰
- 7.14 The Parties both supply footwear and apparel products both in-store and online. We investigated different aspects of these products and the extent to which different types of products belong in the same relevant market.

Footwear and apparel

Parties' views

- 7.15 The Parties submitted that footwear and apparel were separate markets and that this accorded with industry practice and common sense on demand-side substitutability.⁹¹

Our assessment

- 7.16 We consider that it is appropriate to define each of footwear and apparel as separate markets, as these markets are sufficiently distinct to justify separate examination. From a demand-side perspective, they are functionally different and so substitution between the two is unlikely. From a supply-side perspective, some retailers focus on apparel, some on footwear and some on both. Therefore, across footwear and apparel there are different relevant

⁸⁸ CMA Guidance, paragraph 5.2.1.

⁸⁹ CMA Guidance, paragraph 5.2.5.

⁹⁰ CMA Guidance, paragraph 5.2.11.

⁹¹ JD Sports, *Initial Phase 2 Submission*, November 2019, paragraph 86.

competitors (and constraints), which indicate that they are separate markets. Further, while supply-side substitution (at the retail level) is possible, we recognise that it would require obtaining access to a different set of products, repositioning of the retail brand and changes to store and website layouts and operations, such that such substitution may not be sufficiently quick (ie generally within a year).⁹² This suggests that retailers are unlikely to be able to change whether they supply footwear or apparel sufficiently quickly and effectively for us to consider classifying both product types within a broad market.

- 7.17 Defining separate markets for footwear and apparel is in line with previous CMA merger inquiries, such as in JD Sports/Go Outdoors, in which the CMA defined separate markets for the retail supply of outdoor footwear on the one hand, and the retail supply of outdoor clothing on the other.⁹³
- 7.18 We have not found any evidence that it was appropriate to assess a separate market for bundles of footwear and apparel and the Parties supported this approach in their submissions.

Footwear

Different types of footwear

- 7.19 There are many different types of footwear including formal footwear, sports performance footwear and sports-inspired casual footwear. As explained in chapter 2, demand for sports-inspired casual footwear has grown rapidly in recent years. We recognise that some types of footwear may be bought and used differently by different consumers eg some shoes designed for use for a particular sport may also be purchased and worn casually. Nevertheless, we have considered which types of footwear belong within the relevant market, as set out in this section.

Parties' views

- 7.20 The Parties submitted that the relevant product frame of reference for footwear was:

⁹² CMA Guidance, paragraph 5.2.17.

⁹³ Completed acquisition by JD Sports Fashion Plc of Go Outdoors Topco Limited, ME/6648/16, dated 7 June 2017 (JD/Go Outdoors).

the retail supply of casual fashion footwear (such as trainers and classic trainers (including hi-tops), boots, slides, canvas and plimsolls, brown and black casual shoes or brogues, espadrilles and Flip Flops).

- 7.21 JD Sports also submitted that the CMA should conduct a brand-by-brand assessment of footwear sales, although it did not have strong views on how this assessment should be distributed across market definition (eg whether these brands were defined as separate markets, segments or looked at through a separate lens).⁹⁴

Third parties' views

- 7.22 One third party submitted that it was appropriate to consider a narrower product market than sports-inspired casual footwear, specifically a market for 'restricted products' (these are Nike and adidas special make-up/exclusive and high-end/premium products that are currently supplied to only a limited number of large-scale multi-brand retailers in the UK).⁹⁵

Our assessment

- 7.23 We recognise that the Parties stock a range of footwear that may fall across different categories of fashion. However, for the purposes of market definition we started by classifying the category where the Parties overlap and then considered the constraints on these products.⁹⁶
- 7.24 We have defined a category of footwear as sports-inspired casual footwear, which are products designed to reflect athletic fashion trends and used primarily for leisure purposes.⁹⁷ For the purposes of illustration, we consider that this would include products such as Nike Air Max 720, adidas Originals Ozweego, Puma RS-X Winterised, vans BruX Wc and Jordan Mars 270. However, we have not exhaustively defined the precise products or suppliers that fall within this category.
- 7.25 We consider that the Parties overlap in the supply of sports-inspired casual footwear. For example, both Parties stock Nike Air Max 720 and adidas Originals Ozweego. Indeed, more generally, for Nike and adidas footwear, [X] % of Footasylum's Nike footwear products and [X] % of its adidas footwear products are also stocked by JD Sports.

⁹⁴ JD Sports, *Initial Phase 2 Submission*, November 2019, paragraph 92.

⁹⁵ *Company A, Summary of response to the CMA's Issues Statement*, paragraph 1.

⁹⁶ *CMA Guidance*, paragraph 5.2.11.

⁹⁷ This excludes non-sports-inspired casual products, such as boots, performance sport footwear, outdoor footwear and formal footwear.

7.26 We have therefore taken as our starting point the retail supply of sports-inspired casual footwear.

Restricted products

7.27 As stated in paragraph 6.27, one third party submitted that it was appropriate to consider a narrower product market than sports-inspired casual footwear, specifically a market for 'restricted products'.

7.28 In our competitive assessment (see chapters 8 and 9), we have taken account of constraints within the market including segments within that market. As such, a broader market definition does not preclude us from finding an SLC within a segment of that broader market. Nevertheless, we have considered whether a market definition focused on restricted products would be appropriate.

7.29 On the demand-side, it has been put to us that one of the benefits of restricted products is that they drive footfall,⁹⁸ which helps to generate sales of other products. This means that retailers are likely to benefit most from having both restricted products and other products. This presence of 'spill-over' effects from restricted products to other products means it is not clear whether there is limited substitutability from restricted products to other products (implying a narrower market definition focused on restricted products); or whether when considering a purchase of a restricted product, some consumers would be willing to substitute to an alternative (implying a broader market definition covering restricted and other products). For example, our store exit survey found that only 9% (JD Sports) to 13% (Footasylum) of footwear customers listed 'products that other stores don't have' as a reason for why they chose to shop at one of the Parties' stores.⁹⁹ This might imply that few consumers have strong preferences for products that have limited availability.

7.30 On the supply-side, we note that restrictions in access to branded products are based on suppliers' distribution arrangements and segmentation policies, which can be changed at any time. As such a particular product could change from being 'restricted' to 'non-restricted' simply by a supplier's unilateral decision. For example, we have seen evidence that suppliers manage their products over a product life cycle, which involves different phases of sales volumes. Therefore, it is our view that distinctions between restricted and non-restricted products are not a stable basis on which to define a market.

⁹⁸ Company A, *Summary of response to the CMA's Issues Statement*, paragraph 3.

⁹⁹ DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

7.31 Therefore, we do not consider it appropriate to define a narrower product market for restricted products but have taken into account the impact of restricted products and access to these products in our competitive assessment where appropriate.

Other types of footwear

- 7.32 We have considered whether there was any basis to widen our product market definition from the retail supply of sports-inspired casual footwear to include other types of footwear. Nike, adidas and other suppliers of branded sports-inspired casual footwear typically also produce sports performance footwear but not other types of footwear.
- 7.33 On the demand side, for at least some sports performance products such as football boots, due to their functional differences, demand-side substitutability from sports-inspired casual footwear is likely to be limited. Therefore, these performance type products are generally unlikely to belong in the relevant market. Equally, other types of footwear (eg formal shoes and boots) are unlikely to be seen as demand-side substitutes to sports-inspired casual footwear, due to their functional differences, as well as not generally being available from the same suppliers.
- 7.34 On the supply-side, with regard to sports performance products, suppliers typically allocate their branded products into different segments, such as lifestyle or sports performance and while these can change, we have found little evidence that they do. Nike submitted that it was 'not uncommon' for it to recategorise products over the long term, although it only identified one instance of recategorisation between product segments since January 2018 – the VaporMax, which was reclassified from a running shoe to a lifestyle product. As such, we consider that these products should not be included in the market on the grounds of supply-side substitution. With regard to other types of footwear (eg formal shoes and boots), the suppliers are typically different from those of sports-inspired casual footwear, such that the conditions of competition are different, suggesting a lack of supply-side substitution.¹⁰⁰
- 7.35 Our provisional view on the basis of the evidence set out above is that the relevant product market is the retail supply of sports-inspired casual footwear.¹⁰¹ However, we acknowledge that the boundaries of the market are

¹⁰⁰ CMA Guidance, paragraph 5.2.17.

¹⁰¹ We note that even within sports-inspired casual footwear and apparel there are different types of branded products that may not be close substitutes (eg higher-tier and lower-tier products). If two products perform the

blurred and we have therefore taken account of constraints from outside the market. As such we have considered the strength of the constraint from retailers stocking other types of footwear, including sports performance footwear, casual fashion footwear, and/or other categories of footwear, in our competitive assessment (see chapter 8).

In-store and online sales

- 7.36 We have also considered whether the product market for footwear should be segmented by distribution channel, ie between in-store and online sales (including both online delivered and online click-and-collect).

Relative size of in-store and online

- 7.37 As relevant context, we first reviewed the relative size of the in-store and online channels in the relevant product market. The in-store channel is currently the larger of the two channels. Our analysis of data received from the Parties and third parties suggests that in 2018 in-store accounted for 60% and online accounted for 40% of total sports-inspired casual footwear sales.¹⁰²
- 7.38 The proportion of in-store and online sales varies across retailers. JD Sports has a larger in-store proportion ([X]%) than the sports-inspired casual footwear market as a whole, whereas Footasylum has a proportion ([X]%) that is more in line with the overall market.¹⁰³ Nike's and adidas' in-store footwear sales account for [X]% and [X]% of their total DTC footwear sales, respectively.¹⁰⁴
- 7.39 This indicates that in-store is currently the main channel, but online accounts for a substantial proportion of sales. We recognise that the market is dynamic and that these proportions may therefore change in the future (we have examined the role of DTC expansion in our competitive assessment in chapter 8). Building on the proportions of in-store and online sales, we then turned to the growth of online sales.

same purpose, but one is of higher price and quality, they might be included in the same market. The question is whether the price of one constrains the price of the other. Although one is of lower quality, customers might still switch to this product if the price of the more expensive product rose such that they no longer felt that the higher quality justified the price differential. [CA98 Market definition guidelines](#), paragraph 3.5.

¹⁰² CMA analysis of the Parties' and third parties' data.

¹⁰³ Values based on September 2019. CMA analysis of the Parties' data.

¹⁰⁴ CMA analysis of Nike and adidas data.

Growth of online

- 7.40 Sales in both the in-store and online channels have grown (19% and 154% growth respectively between 2015 and 2018), but the online channel has grown faster, leading to an increase in its relative size.¹⁰⁵ Online's share of the total revenue of sports-inspired casual apparel has risen, from around 22% of total revenue of sports-inspired casual footwear in 2015 to around 37% in 2018.¹⁰⁶
- 7.41 Looking specifically at the Parties, between September 2014 and September 2019, JD Sports' revenue from footwear within the relevant product market sold through its online channel increased from approximately [X]% to approximately [X]% of its total footwear revenue. Between September 2014 and September 2019, Footasylum's revenue from such footwear sold through its online channel increased from approximately [X]% to approximately [X]% of its total footwear revenue.
- 7.42 Given that in-store sales are still growing (albeit at a much lower rate than online), it is likely that the growth of online is explained both by new market growth and some migration of consumers who previously purchased only, or primarily, in-store, to increasingly purchasing online. Such migration can cause a competitive tension between channels and retailers can compete to slow down or speed up such migration, or encourage the use of a particular channel, for example through making gift cards redeemable in both channels or only one channel.¹⁰⁷ It is also possible that continuing migration may over time reinforce in-store and online preferences in distinct sets of consumers who primarily use one channel or the other.

Parties' views

- 7.43 JD Sports submitted that the distinction between the in-store and online channels was blurred and that it was not appropriate to identify distinct frames of reference for in-store and online sales.

¹⁰⁵ CMA analysis of the Parties' and third parties' data.

¹⁰⁶ Comparison based on a sub-set of retailers which provided data back to 2015, hence the 2018 value differs from that stated in 7.37. CMA analysis of the Parties' and third parties' data.

¹⁰⁷ JD Sports submitted that prior to 13 February 2019 its physical gift cards were only redeemable in-store and there was no e-gift card, but after this date physical gift cards were made redeemable online and e-gift cards were introduced in response to customer feedback that gift cards should be redeemable both in-store and online and to [X]. JD Sports, *Initial Phase 2 Submission*, November 2019, paragraphs 115-116.

- 7.44 It submitted that the CMA's surveys supported the view that there was a market that included online and in-store due to the extent of diversion across these channels.
- 7.45 JD Sports also submitted that 'the digitally-inspired customer journey, evidence of actual store to online substitution, the immediate price constraint of online, and the pressure to differentiate the store means that online is an important constraint on in-store, regardless of market definition'.¹⁰⁸

Our assessment

- 7.46 We recognise that there are significant linkages between the in-store and online channels in this market. Each of the channels can be used for different aspects of the consumer journey – search, comparison and purchase – and these can be done interchangeably across channels. While some consumers may have strong preferences for one channel, others use these channels as substitutes or in combination. For example, consumers may first see products online, including on social media (eg on Instagram) or in-store (eg at a flagship store) and then purchase in the other channel. Some consumers might search online and then buy in-store, or the other way around, for example trying on products in-store and then buying online.
- 7.47 Given the above, we acknowledge that the linkages between in-store and online are sufficiently material such that the distinction between the two channels is blurred and that it is therefore important not to consider each channel in isolation without recognising these linkages. On that basis, we have assessed whether the two channels are in the same market for the purposes of market definition.

- *Qualitative difference between in-store and online*

- 7.48 We consider that the shopping experience is qualitatively different between the two channels. In-store, consumers are able to touch and try on footwear in a way that they cannot online. In-store service can be delivered in person. Further, purchases made in-store are received immediately whereas online purchases have a short delivery delay before receipt by the consumer.¹⁰⁹
- 7.49 However, these types of differences are not in themselves sufficient to indicate whether or not the two channels are seen as substitutes by consumers themselves. We therefore consider that consumer behaviour and

¹⁰⁸ JD Sports, *Initial Phase 2 Submission*, November 2019, 14 November 2019, page 13.

¹⁰⁹ The range of available delivery options, such as next day delivery or standard delivery allow consumers some discretion over the length of this delay and the associated cost of delivery.

stated preferences are more informative of whether the two channels are in the same market.

- *Past-spending behaviour*

7.50 Our store exit survey found that 41% of JD Sports and 36% of Footasylum in-store customers bought all or nearly all of their footwear products in-store over the last year.¹¹⁰ About a third (28% JD Sports; 32% Footasylum) did the same for most of their footwear and around a fifth (22% JD Sports; 20% Footasylum) spent about the same amounts on footwear in-store and online.¹¹¹

7.51 Although we have not given full evidential weight to our online survey (see paragraph 6.26), our best estimates for online customers are from this survey, where around a quarter of the Parties' customers (27% JD Sports, 28% Footasylum) said that they had bought all or nearly all of their footwear products online over the last year.¹¹² About a third (35% JD Sports; 33% Footasylum) said that they had bought most of their items online and over a fifth (21% JD Sports; 24% Footasylum) had bought about the same online and in physical stores.

7.52 When examining actual behaviour rather than reported behaviour, the proportions of multi-channel shoppers are lower for one sub group - members of UNLCKD (Footasylum's loyalty scheme) - than we found in our surveys. For example, only [X]% of UNLCKD customers have made a purchase both in-store and online.

- *Search and comparison before purchase*

7.53 We have considered where consumers actively search or learn of a product prior to purchase. There is evidence that a proportion of consumers search in the other channel than that of their final purchase. This may be looking in-store, on a website or on an app on a smartphone or other device.

7.54 For in-store customers, around a third (32% JD Sports, 35% Footasylum) of customers had visited a relevant retailer's website, compared prices online or seen the item online, in advance of purchasing in-store.¹¹³

¹¹⁰ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹¹¹ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹¹² [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

¹¹³ CMA analysis of exit survey data with responses weighted to be nationally representative.

7.55 Our online survey¹¹⁴ found that around a quarter of the Parties' customers (24% JD Sports; 22% Footasylum) said that they had looked for the item in a physical store before placing their order online.¹¹⁵

- *Willingness to divert*

7.56 In terms of the potential for direct substitution between the channels, 45% (JD Sports) and 35% (Footasylum) of all in-store footwear customers said that they would switch to online if all of the stores of the retailer they had purchased from closed.¹¹⁶ We noted that the wording of these survey questions stated that in this scenario the relevant Party was still selling online, which may have prompted customers to think of that Party's online channel. As such the diversion estimates to online may have some upwards bias. This appears to be reflected in the results to the following question, where customers were subsequently asked which online retailer they would have been most likely to switch to. The majority stated the relevant Party's own online channel (about 77% for JD Sports and 60% for Footasylum).¹¹⁷

7.57 Our online survey provided some evidence of the potential for direct substitution from online to in-store, where 40% of JD Sports online customers and 31% of Footasylum online customers said that they would switch to a physical store if the relevant Party had stopped selling online. A large proportion of this switching was to the relevant Party's own stores (53% for JD Sports and 30% for Footasylum).¹¹⁸

- *Customer demographics and use of in-store and online*

7.58 The Parties' focus is on the 16-24 year old age group¹¹⁹ (99% of whom use the internet),¹²⁰ suggesting that their customers' access to and use of online stores is likely to be high. Indeed, 79% of this entire age group has bought clothes or sports goods online in the last 12 months.¹²¹ The Parties also have a proportion of customers outside this age group, who may also purchase

¹¹⁴ As set out in chapter 6, we have not put full evidential weight on our online survey results due to low response rates.

¹¹⁵ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

¹¹⁶ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹¹⁷ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹¹⁸ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

¹¹⁹ Footasylum's [Annual Report and Accounts 2018](#) states that its target audience is '16-24 year-old digital natives. JD Sports' checkout survey found that [§].

¹²⁰ [Ofcom, Adults Media Use and Attitudes, 2019](#), page 2.

¹²¹ [Office for National Statistics, Internet Access – Households and Individuals](#), 12 August 2019, Table 16.

online. For example, 65% of people in the 45-54 age group had bought clothes or sporting goods online in the last 12 months.¹²²

7.59 Our surveys did not indicate a clear segmentation in customer type between in-store and online, with respondents to both surveys having a broadly similar composition of age categories, though we note that a higher proportion of respondents to the store exit survey were male, compared with the online survey.¹²³

- *Retailer operations*

7.60 All national in-store retailers of sports-inspired casual footwear also have an online offering. These retailers operate their in-store and online businesses together, typically using the same distribution centres to supply both, purchasing from suppliers without commitments to the channel through which stock must be sold. Retailers also increasingly facilitate consumers' switching between channels, for example the availability of click and collect at JD Sports has recently started to be introduced via in-store kiosks, allowing its online range to be accessed in-store. The Parties also do not generally distinguish between competitors' in-store and online propositions in their internal documents (see paragraph 8.97). Some retailers are online-only eg ASOS, Amazon, Zalando.

7.61 There are some similarities and differences between the offerings of retailers in this market (including the Parties) in-store and online. Retailers in this market, including the Parties, as a matter of policy tend to align their list prices between in-store and online. However, there is evidence of some discounts being available online but not in-store (eg JD Sports' year-round student discount of 10% is available online¹²⁴ but not in-store) and delivery charges apply online (below a certain threshold). The Parties' full range of stock is typically available online, but not all products are available in-store due to limited space. JD Sports submitted that [✂].

Provisional view on footwear

7.62 We recognise that the evidence discussed above is not clear-cut. The survey evidence shows that, in relation to the demand-side, there is an apparent willingness of a sizeable proportion of consumers within each channel to

¹²² Office for National Statistics, *Internet Access – Households and Individuals*, 12 August 2019, Table 16.

¹²³ DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020 and DJS Research, *Survey of online retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

¹²⁴ JD Sport website, as visited on 23 January 2020.

divert to the other channel and that past spending behaviour of consumers is consistent with these switching proportions. We consider that these switching proportions are likely to be large enough to act as a constraint on the alternative channel. On the supply-side, generally retailers operate their in-store and online businesses together, although we recognise some retailers are present only online.

- 7.63 On balance, our provisional view is that a sufficient proportion of consumers currently shop in both the in-store and online channels, or would be prepared to move between the two channels, in order for the two channels to be considered within the same product market.¹²⁵ Nevertheless, we have examined any material differences between the channels in the constraints on the Parties and the strength of constraint on the Parties of retailers who operate only or primarily in each channel, in our competitive assessment (see chapter 8).

Apparel

- 7.64 As with footwear, apparel can be differentiated based on many factors such as price, materials, creative content and marketing. While there are many different types of apparel, from formalwear to leisurewear, the extent to which these can be considered substitutes and within the same market is largely dependent on consumer preferences.

Parties' views

- 7.65 The Parties submitted that they competed in a broad fashion segment. The Parties submitted that the relevant product frame of reference for apparel was:

the retail supply of casual fashion apparel/clothing (such as T-Shirts and polo shirts, shirts, gilets, tracksuits, denim, sweatshirts, hooded tops, shorts and swim shorts, leggings, skirts and dresses, replica football kits, chinos, formal or printed shirts etc).

- 7.66 The Parties further submitted that a narrower market segmentation such as athleisure or activewear/sportswear was not appropriate in this case because, amongst other reasons, athleisure forms part of the wider casual fashion apparel market and the boundaries were not clear.¹²⁶

¹²⁵ The surveys were commissioned at phase 2 and so the results were not available at phase 1. At phase 2, they have informed our provisional conclusion to combine the in-store and online channels.

¹²⁶ [CMA, Phase 1 decision, paragraph 64.](#)

7.67 The Parties submitted that within the fashion segment they each had a different focus. JD Sports submitted that it focused more on reselling sports heritage brands¹²⁷ and Footasylum focused more on own-brand/Bedroom Brand¹²⁸ ‘urban male fashion’.¹²⁹ Footasylum submitted that [REDACTED].

Third parties’ views

7.68 One third party submitted that, as with footwear, it was appropriate to consider a narrower product market for restricted products.¹³⁰

Our assessment

7.69 We recognise that the Parties stock a range of apparel that may fall across different categories of fashion. However, for the purposes of market definition we have started by classifying the category where the Parties overlap and then considered the constraints on these products.¹³¹

7.70 We have defined a category of apparel as sports-inspired casual apparel, which are products designed to reflect athletic fashion trends and used primarily for leisure purposes.¹³² For the purposes of illustration, we considered that this category would include products such as Vans Classic Logo t-shirt, Nike Futura t-shirts, Nike Tech Fleece Joggers, adidas Originals 3 Stripes Tee and adidas Originals Essential Overhead Hoodies. However, we have not exhaustively defined the precise products or suppliers that fall within this category.

7.71 We consider that the Parties overlap in the supply of sports-inspired casual apparel. For example, both Parties stock the Nike and adidas products listed in paragraph 7.70 and, more generally, [REDACTED]% of Footasylum’s Nike apparel products and [REDACTED]% of its adidas apparel products are also stocked by JD Sports. Although their degree of specific product overlap is lower than it is in footwear, we considered that it is still sizeable and as assessed further in chapter 9, there is evidence from our surveys that customers consider the Parties’ apparel offerings to be substitutable.

¹²⁷ JD Sports, *Initial Phase 2 Submission*, November 2019, page 13 and in the [REDACTED].

¹²⁸ A term used by the Parties to describe emerging fashion brands that start life in their founders’ bedrooms (ie are founded by individual entrepreneurs).

¹²⁹ JD Sports, *Initial Phase 2 Submission*, 14 November 2019, page 13.

¹³⁰ *Company A, Summary of response to the CMA’s Issues Statement, paragraph 1.*

¹³¹ *CMA Guidance, paragraph 5.2.11.*

¹³² This excludes non-sports-inspired casual products, such as boots, performance sport footwear, outdoor footwear and formal footwear.

7.72 We have therefore taken as our starting point the supply of sports-inspired casual apparel.

Restricted products

7.73 For the same reasons given in paragraphs 7.27 - 7.31 for footwear, we consider that it is not appropriate to define a narrower product market for restricted products. Rather we consider that the most appropriate product market is the retail supply of sports-inspired casual apparel.

Other types of apparel

7.74 We have considered whether there is any basis to widen our product market definition from the retail supply of sports-inspired casual apparel to include other types of apparel.

7.75 The Parties submitted that they competed in a wider fashion segment. For example, [redacted].

7.76 In general, we consider that highlighting the apparent similarity between certain products is not informative of the extent to which consumers consider these products (and the retailers they are stocked in) to be significant alternatives to the Parties' products in a differentiated frame of reference. Objectively identifying constraints in fashionwear markets, where perceptions of products and brands are subjective, is challenging.

7.77 We consider that evidence of consumer behaviour is the most informative source in assessing the extent to which other fashionwear products compete with sports-inspired casual apparel. Our store exit survey found that the closest competitors to the Parties were those that also stock sports-inspired casual apparel. Customers did not state that more general fashion retailers were close substitutes. For example, our store exit survey found that only 1% of Footasylum customers gave [redacted] as their next best alternative.¹³³ [redacted] itself did not view itself as a competitor of Footasylum or JD Sports, stating:

We fundamentally believe [redacted] not to compete directly with either of JD Sports, Foot Asylum [sic], or any other sports inspired business. We are a fashion retailer that offers casual clothing in addition to smarter products.

¹³³ DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

7.78 Evidence from the Parties and third parties shows that the Parties are focused on sports-inspired casual apparel:¹³⁴

- (a) the Parties' range is different from the range offered by non-specialist general retailers, with the Parties more focused on branded products from suppliers such as Nike or adidas (see chapter 9) that other high street retailers do not typically offer. This suggests that the Parties' offerings would not be considered substitutable by customers with the non-branded offerings of non-specialist high street retailers;
- (b) third parties submitted that the Parties focused on sports-inspired apparel for the purpose of casual fashion rather than practising sports. Several non-specialist retailers, such as [redacted] and [redacted],¹³⁵ stated that they did not compete with the Parties or did so to only a limited extent, further suggesting a distinction between retailers of sports-inspired apparel and casual fashionwear more generally;
- (c) the Parties' internal documents suggest that their competitor monitoring focuses mainly on retailers that either exclusively sell sports-inspired casualwear, or that devote a substantial portion of their offering to sports-inspired casualwear (see chapter 9).

7.79 We therefore consider that there is unlikely to be significant demand-side substitution between sports-inspired casual apparel and broader casual fashionwear. However, we have considered the strength of the constraint from other types of apparel, including casual fashionwear and other categories of clothing in our competitive assessment (see chapter 9).

In-store and online sales

7.80 We have next considered whether the product market for apparel should be segmented by channel, ie between in-store and online sales (including both online delivered and online click and collect).

7.81 Much of the discussion set out in paragraphs 7.36 - 7.61 for footwear is also relevant for apparel. The Parties' and third parties' submissions on the roles of the in-store and online channels for footwear were made also for apparel and are therefore not repeated below.

¹³⁴ CMA, *Phase 1 decision*, paragraph 71.

¹³⁵ See chapter 9.

Relative size of in-store and online

- 7.82 As relevant context, we have reviewed the relative size of in-store and online channels. The in-store channel is currently the larger of the two channels. Our analysis of data received from the Parties and third parties suggests that in 2018 in-store accounted for 70% and online accounted for 30% of total sports-inspired casual apparel sales.¹³⁶
- 7.83 The proportion of in-store and online sales varies across retailers. JD Sports has a larger in-store proportion ([X]%) than the sports-inspired casual apparel market as a whole, whereas Footasylum has a slightly smaller proportion ([X]%).¹³⁷ Nike's and adidas's in-store apparel sales account for [X]% and [X]% of their total DTC apparel sales, respectively.¹³⁸
- 7.84 This indicates that in-store is currently the main channel, but online accounts for a substantial proportion of sales. We recognise that the market is dynamic and that these proportions may therefore change in the near future (we have examined the role of DTC expansion in our assessment of competitive effects in chapter 9). Building on the proportions of in-store and online sales, we then turned to the growth of online sales.

Growth of online

- 7.85 Sales in both the in-store and online channels of the relevant market have grown (45% and 167% growth respectively between 2015 and 2018), but the online channel has grown faster, leading to an increase in its relative size.¹³⁹ Online's share of the total revenue of sports-inspired casual apparel has risen, from around 20% in 2015 to around 31% in 2018.¹⁴⁰
- 7.86 Looking specifically at the Parties, between September 2014 and September 2019, JD Sports' revenue from apparel within the relevant product market sold through its online channel increased from approximately [X]% to approximately [X]% of its total apparel revenue. Between September 2014 and September 2019, Footasylum's revenue from such apparel sold through its online channel increased from approximately [X]% to approximately [X]% of its total apparel revenue.
- 7.87 As for footwear (eg see paragraph 7.62), we recognise that in-store sales are still growing (albeit at a much lower rate than online) and it is likely that the

¹³⁶ CMA analysis of Parties' and third parties' data.

¹³⁷ Values based on September 2019. CMA analysis of Parties' data.

¹³⁸ CMA analysis of Nike and adidas data.

¹³⁹ CMA analysis of the Parties' and third parties' data.

¹⁴⁰ Comparison based on a sub-set of retailers which provided data back to 2015, hence the 2018 value differs from that stated in 7.82. CMA analysis of Parties' and third parties' data.

growth of online is explained both by new market growth and some migration of consumers who previously purchased only, or primarily, in-store, to increasingly purchasing online. Such migration can cause a competitive tension between channels, and retailers can compete to slow down or speed up such migration, or encourage the use of a particular channel, for example through making gift cards redeemable in both channels or only one channel. It is also possible that continuing migration may over time reinforce in-store and online preferences in distinct sets of consumers who primarily use one channel or the other.

Parties' views

- 7.88 JD Sports submitted several points relevant to the distinction between the in-store and online channels which apply across footwear and apparel (paragraphs 7.43 - 7.45). In summary, it submitted that the distinction between the in-store and online channels was blurred.

Our assessment

- 7.89 As for footwear (see paragraphs 7.46 and 7.47), we acknowledge that the linkages between the in-store and online channels are sufficiently material such that the distinction between the two channels is blurred and that it is therefore important not to consider each channel in isolation without recognising these linkages. On that basis, we have assessed whether the two channels are in the same market for the purposes of market definition.

- *Qualitative difference between in-store and online*

- 7.90 For the same reasons as for footwear, we consider that the shopping experience is qualitatively different between the two channels (see paragraph 7.48).

- 7.91 However, again on the same basis as for footwear, we consider that consumer behaviour and stated preferences are more informative of whether the two channels are in the same market, than observations about differences between the two channels.

- *Past spending behaviour*

- 7.92 Our store exit-survey found that around a third (34% JD Sports; 31% Footasylum) of the Parties' in-store apparel customers bought all or nearly all

of their apparel in-store over the last year.¹⁴¹ About a quarter (26% JD Sports; 28% Footasylum) did the same for most of their apparel and around a quarter (28% JD Sports; 26% Footasylum) spent about the same amounts on apparel in-store and online.¹⁴²

7.93 Our online survey of the Parties' customers found that between a fifth and a quarter (23% JD Sports, 21% Footasylum) said they had bought all or nearly all of their apparel products online over the last year.¹⁴³ A further two-fifths (38% JD Sports; 39% Footasylum) said they had bought most of their items online, and over a quarter (26% JD Sports; 28% Footasylum) said they had bought about the same online and in stores.

7.94 Footasylum's assessment of UNLCKD customer purchases shows a lower proportion of multi-channel shoppers (see paragraph 7.52).

- *Search and comparison before purchase*

7.95 We have considered where consumers actively search or learn of a product prior to purchase. There is evidence that a proportion of consumers search in the other channel than that of their final purchase. This may be looking in-store, on a website or on an app on a smartphone or other device.

7.96 Between a quarter and a third of the Parties' customers (26% JD Sports, 31% Footasylum) of in-store apparel had visited a relevant retailer's website, compared prices online or seen the item online, in advance of purchase in-store.¹⁴⁴

7.97 Our online survey found around a fifth of the Parties' customers (19% JD Sports; 19% Footasylum) said that they had looked for the item in a physical store before placing their order online.

- *Willingness to divert*

7.98 In terms of potential for direct substitution between channels, 47% (JD Sports) and 39% (Footasylum) of all in-store apparel customers said that they would switch to online if all of the stores of the retailer they had purchased from closed.¹⁴⁵ The wording of these survey questions states that in this scenario the relevant Party was still selling online. As such the diversion estimates to

¹⁴¹ CMA analysis of exit survey data with responses weighted to be nationally representative

¹⁴² CMA analysis of exit survey data with responses weighted to be nationally representative.

¹⁴³ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

¹⁴⁴ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹⁴⁵ CMA analysis of exit survey data with responses weighted to be nationally representative.

online may have some upward bias. This appears to be reflected in the results to the following question, where respondents were subsequently asked which online retailer they would have been most likely to switch to. The majority stated the relevant Party's own online channel (about 77% for JD Sports and 66% for Footasylum).¹⁴⁶

7.99 Our online survey provides some evidence of the potential for direct substitution from online to in-store, where 36% of JD Sports online customers and 34% of Footasylum online customers said that they would switch to a store if the relevant Party stopped selling online. A large proportion of this switching was to the relevant Party's own stores (58% for JD Sports and 36% for Footasylum).¹⁴⁷

- *Customer demographics and use of in-store and online*

7.100 As for footwear, the Parties' consumer bases are likely to be familiar with and frequent users of online shopping (see paragraph 7.58). Our surveys did not indicate a clear segmentation in customer type between in-store and online.

- *Retailer operations*

7.101 On the same basis as for footwear, we consider that all national in-store retailers in this market also have an online offering and that there are some similarities and differences between the offerings of retailers in this market (including the Parties) in-store and online (see paragraphs 7.60 and 7.61).

Provisional view

7.102 As with footwear, we recognise that the evidence discussed above is not clear-cut. The survey evidence shows that, in relation to the demand-side, there is an apparent willingness of a sizeable proportion of consumers within each channel to divert to the other channel and that past spending behaviour of consumers is consistent with these switching proportions. We consider that these switching proportions are likely to be large enough to act as a constraint on the alternative channel.

7.103 On balance, our provisional view is that a sufficient proportion of consumers currently shop in both the in-store and online channels, or would be prepared to move between the two channels, in order for the two channels to be

¹⁴⁶ CMA analysis of exit survey data with responses weighted to be nationally representative.

¹⁴⁷ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

considered within the same product market.¹⁴⁸ Nevertheless, we have examined any material differences between the channels in the constraints on the Parties and the strength of constraint from retailers who primarily operate only or in each channel, in our competitive assessment (see chapter 9).

Geographic market definition

7.104 We have also considered the relevant geographic market definition, which sets out the area within which we have assessed the Merger. A relevant geographic market definition could be, for example, local, regional, national or international. The scope of the geographic market influenced the consumers, retailers, stores and websites that we have considered in our competitive assessment.

Parties' views

7.105 JD Sports submitted that there was no difference in the geographic market between footwear and apparel and that in-store demand was locally driven.

7.106 It also submitted that the precise geographic market could be left open, as no SLC would arise regardless of the geographic frame of reference adopted.

Our assessment

7.107 We consider that the geographic aspect of the sports-inspired footwear and apparel markets is likely to be the same. On that basis, we have not assessed each of these separately. The degree of demand-side substitutability across different geographies is likely to be the same for each of footwear and apparel. Further, the Parties stock both footwear and apparel in the majority of their physical stores as well as online.

7.108 We provisionally conclude that the in-store and online channels for footwear (paragraph 7.62), and separately for apparel (paragraph 7.102), are in the same market. Within each market we recognise that aspects of geographic competition may differ between the two channels, as we have considered below.

¹⁴⁸ The surveys were commissioned at phase 2 and so the results were not available at phase 1. At phase 2, they have informed our provisional conclusion to combine the in-store and online channels.

Demand-side substitution

- 7.109 Consumers generally choose to make their purchases either at stores in their local area or online. Where they purchase online, this is usually for delivery to a home or work address or click and collect at a store in the same local area.
- 7.110 In the in-store segment of the market, consumers generally choose among in-store retailers in the local area where they live (or work). Our store exit survey asked customers about the duration of their trip to the store. It found that less than 20% of the Parties' customers travelled for more than 30 minutes to reach the store.^{149,150} This would suggest that their demand is locally based.
- 7.111 In the online segment, consumers generally purchase for delivery to a fixed location (eg home or work address) or click and collect at a store in the same local area. Therefore, there is unlikely to be any significant demand-side substitution by customers to retailers that do not deliver to their preferred address or store, although all significant online retailers typically deliver nationally.
- 7.112 Given the above, we consider that demand is locally driven. However, we have also considered various relevant supply-side factors.

Supply-side considerations

- 7.113 In defining the geographic market, we have considered the supply-side of the market and have taken into account whether retailers compete at the national level, or more locally, and how this affects our competitive assessment.
- 7.114 We have considered whether retailers flex elements of their PQRS locally in their stores or online in response to local competition or whether PQRS is set centrally and applied uniformly across all of their stores and their online offerings. We have set out below our key considerations on this point while Appendix D sets out the submissions and evidence from the Parties and further detail on our assessment.

¹⁴⁹ [DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.](#)

¹⁵⁰ It is possible that some consumers may not be particularly time sensitive for purchases of apparel and footwear. That is, they may be willing to defer purchases until they are going to another nearby destination. Nevertheless, our store exit survey suggested that demand side substitution between local areas is limited and demand is locally driven.

Homogeneity of competitive conditions

7.115 We have considered whether the same retailers compete across different geographic areas and whether the conditions of competition between them are the same in each area. Where they are the same, there is a case for aggregating the local supply of these products and analysing them as one national market.¹⁵¹

7.116 We provisionally find the following:

- (a) for the in-store segment: for Footasylum, the competitive environment (ie the presence of other retailers' stores) and the time taken to drive to the nearest JD Sports store is broadly similar across the country. This homogeneity limits the potential for local variation to be driven by differences in local competitive conditions;
- (i) based on store location data provided to us by the Parties we observed that all Footasylum stores have a JD Sports store and a Sports Direct store within a 20-minute drivetime.¹⁵² Further, [X] of Footasylum's stores have [X] Schuh, Foot Locker or Office within 20 minutes. [X] of the JD Sports stores [X];
- (ii) for JD Sports stores, [X] have a Sports Direct store within 20 minutes. [X] of JD Sports stores [X] Footasylum, Schuh, Foot Locker and Office within 20 minutes;¹⁵³
- (iii) however, there is more variation in competitive conditions for JD Sports stores because it faces greater variation in competitive conditions across the local areas in which it has stores;
- (b) for the online segment, both of the Parties' online offerings are available to consumers throughout the UK and this is the case for their competitors too.^{154,155} Therefore, retailers with an online presence are able to serve all individual local areas and so operate nationally overall. Since all relevant online retailers offer their products nationally, there is homogeneity of competitive conditions.

¹⁵¹ CMA Guidance, paragraph 5.2.17 and 5.2.24.

¹⁵² A 20-minute drivetime was used due to survey evidence [X].

¹⁵³ Figures calculated by the CMA using the store location data provided by the Parties.

¹⁵⁴ See: [Footasylum website](#) and [JD Sports website](#), as visited on 07 February 2020.

¹⁵⁵ We note that in some markets online retailers do not deliver across the whole UK. This is typically the case where services are delivered from local or regional distribution services, such as for online delivered groceries.

Local flexing of parameters of competition

7.117 We have considered whether there is evidence of the Parties engaging in local flexing of competitive parameters in response to local competition, which would indicate that the market is local.

7.118 We provisionally find that:

- (a) on price: the evidence shows that most pricing is set nationally. There are exceptions to this in terms of student discounts, student events, clearance and discounting of damaged goods. Our provisional view is that such exceptions are not sufficient to alter the overall view that pricing is broadly set on a national basis;
- (b) on quality: the Parties conduct store refurbishments at individual stores (rather than across their national store estate as a whole). However, where store refurbishments have occurred, internal documents do not show that local competitive conditions were a material factor in these decisions (see Appendix D);
- (c) on range:
 - (i) Footasylum [redacted] its in-store range [redacted] as part of its national [redacted]. We consider that Footasylum's [redacted],¹⁵⁶. In internal documents, [redacted] our provisional view that local competition is not a material factor in Footasylum's range decisions but that those decisions are instead based on consumer preferences;
 - (ii) there is no evidence that JD Sports flexes its range in response to local competition in-store or online; and
- (d) on service: from our review of internal documents we find that service levels are on the whole set nationally. Staffing decisions appear to be based on policy decisions made centrally, rather than in direct response to local competition, and the bulk of marketing spend is national. There is evidence that local events (such as DJ nights) are flexed locally but that this is not generally a response to local competitive conditions.

7.119 In our provisional view, the evidence set out above indicates that there is limited local flexing of the Parties' in-store offerings and no local flexing of their online offering.¹⁵⁷ To the extent there is any local flexing on range in-

¹⁵⁶ [redacted].

¹⁵⁷ Although websites may be configured to display different products depending on local areas, the offering available is the same.

store, this is not generally a response to local competitive conditions. Therefore, we provisionally conclude that the extent of local flexing is limited and that local competition is not a material factor in driving the limited variation that is observed. There is no evidence that local flexing by the Parties would become more likely post-Merger and we have not seen plans to do so.¹⁵⁸

Geographic basis of our competitive assessment

7.120 As the parameters of competition are set nationally, we have focused our competitive assessment of the Merger (as set out in chapters 8 and 9) on a national basis, taking account of the aggregation of any local effects but not undertaking separate analyses in each local area. We note that submissions from the Parties and third parties support this approach. For the purpose of conducting the competitive assessment in this case, we therefore provisionally define the relevant markets as national.¹⁵⁹

Provisional conclusion on geographic market definition

7.121 In forming our view on the relevant geographic markets for both footwear and apparel we recognise that there are some differences between the in-store and online segments of these markets.

7.122 For the in-store segment, we provisionally find that demand is locally driven. However, we also find that the main parameters of competition are uniformly and centrally set. As such, provisionally we find that competition occurs nationally and therefore it would be appropriate to assess the in-store segment on a national basis.

7.123 For the online segment, we find that demand is locally driven. However, online delivery (and click and collect) are offered nationally and the conditions of competition are homogenous nationally, such that it is appropriate to consider the geographic scope of this segment to be national.

7.124 On that basis, and in light of the evidence set out above, we provisionally find that the appropriate geographic market definition for both sports-inspired casual footwear and apparel is national ie the whole of the UK.

¹⁵⁸ We consider that across Footasylum stores the conditions of competition are homogenous and across JD Sports' stores, the Merger makes the conditions of competition more homogenous rather than less. As such the Merger does not increase incentives to flex locally.

¹⁵⁹ If it was the case that there was local flexing in stores due to local competition and national online offerings constrained in-store offerings (they were part of the same market), we could define local markets where the online constraint could be considered as additional competitors in each local market. The French Competition Authority has adopted this approach in two recent cases [19-DCC-65](#) and [16-DCC-111](#).

Provisional conclusion

7.125 We provisionally define the relevant markets as:

- (a) the retail supply of sports-inspired casual footwear (in-store and online) in the UK; and
- (b) the retail supply of sports-inspired casual apparel (in-store and online) in the UK.

8. Our competitive assessment of unilateral effects - footwear

Introduction

- 8.1 In this chapter, we have set out our assessment of the effect of the Merger on the retail supply of sports-inspired casual footwear at a national level.
- 8.2 We have assessed whether the Merger has removed a competitor from the sports-inspired casual footwear market which previously provided a competitive constraint, and whether it would allow the Merged Entity to worsen or not improve its offering as much as it would absent the Merger. As explained in chapter 6, this is referred to as a ‘horizontal unilateral effects’ theory of harm.
- 8.3 Horizontal unilateral effects are more likely when the merging parties are close competitors. Generally, the closer two businesses are then the stronger their competitive constraint is on each other, which would be lost as a result of a merger. We have therefore considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the sports-inspired casual footwear market. As part of this assessment, we have also considered other current competitive constraints on the Parties from other retailers and suppliers.
- 8.4 In addition to current competitive constraints, we have also considered whether any market developments (ie future changes in market constraints) are likely to affect our assessment. This includes assessing whether there are any changes underway or likely to happen in the foreseeable future (ie the next few years), such as other retailers in the market repositioning their offer or substantially growing, that might materially change the nature of the existing competitive constraints on the Parties.
- 8.5 We have reviewed a range of evidence collected from the Parties, other retailers and suppliers, as well as evidence from the Parties’ customers gathered via our surveys (see chapter 6). We have assessed this evidence in the round to form our provisional decision.
- 8.6 We note that a number of submissions from the Parties and third parties covered both the footwear and apparel product markets, which are set out in this chapter. Where there are specific comments on footwear, we also set these out in this chapter and submissions specific to apparel are set out in chapter 9.

- 8.7 In the following sub-section, we have set out our approach to our assessment. The remainder of this chapter is then structured as follows:
- (a) role of suppliers;
 - (b) how retailers compete;
 - (c) market shares;
 - (d) retailers' offerings;
 - (e) internal documents;
 - (f) surveys;
 - (g) GUPPIs;
 - (h) entry-exit analysis;
 - (i) overview of current competitive constraints; and
 - (j) market developments.
- 8.8 Within each of these sections, we have first set out any relevant submissions made by the Parties and third parties, before setting out our own assessment of these.
- 8.9 Lastly, we have set out our provisional conclusion on competitive effects in the sports-inspired casual footwear market.

Approach to our assessment

- 8.10 As discussed in chapters 2 and 7, there is a range of different retailers in the sports-inspired casual footwear market, including the Parties, and each of these is competing to attract consumers through differentiated offerings.
- 8.11 Some key elements of differentiation for retailers in this market are:
- the broad product type (some retailers focus more on fashion footwear and others on sports footwear and the boundaries between these are blurred);
 - the range of branded products from suppliers;
 - the value proposition (some retailers focus on higher-priced branded products, others on lower-priced branded products);

- the network of retailers' stores and/or online offering (with some retailers only operating online) and the quality of these; and
- the consumer target market (including age and/or gender).

8.12 As highlighted above, in this market a key element of retailers' differentiation comes from their access to branded products from suppliers, in particular from Nike and adidas. Nike and adidas have a very large market share (approximately [X]%) - see paragraph 2.14) and represent the majority of the Parties' footwear sales.¹⁶⁰ Suppliers therefore have an important role in this market and the Parties have submitted that they would act as a constraint on the Parties post-Merger.

8.13 Given this, we have first considered the role of suppliers on retail competition and the extent to which the Parties have the ability to flex their offering, before considering evidence on the competitive constraints between the Parties and from other retailers in assessing the effect of the Merger.

Role of suppliers

8.14 In this section we have explored the role of suppliers of branded products in competition at the retail level and whether they affect competition between retailers, including the Parties.

Parties' views

8.15 JD Sports submitted that the Parties were subject to a 'significant degree of control and influence' from key suppliers (Nike and adidas) who are 'must-stock' brands.¹⁶¹

8.16 JD Sports submitted that the key suppliers' influence and control over retailers' offering manifested itself in a number of ways:

- (a) they controlled who participates at the retail level for supply of their products by placing retailers into segments or tiers;
- (b) they controlled distribution of products within these segments, both in terms of the particular products that were allocated to individual retailers, and the volumes made available to them; and

¹⁶⁰ In 2018, Nike and adidas represented [X]% of JD Sports' UK footwear sales and [X]% of Footasylum's UK footwear sales.

¹⁶¹ For example, JD Sports, *Initial Phase 2 Submission*, paragraph 8.

(c) they controlled and influenced the PQRS offerings of downstream retailers via detailed selective distribution arrangements.

8.17 JD Sports submitted that Nike and adidas '[REDACTED]'; and unilaterally controlled who was able to participate (and to what extent)' in the market. This resulted in substantial ongoing influence as a result of the constant threat of being disintermediated (ie suppliers no longer using retailers to sell products) or disfavoured.

Third parties' views

8.18 A number of third parties highlighted in their submissions that suppliers had an important and influential role in the market, particularly in terms of retailers' access to branded products. Some examples are set out below.

8.19 [REDACTED] submitted that:

- (a) adopting a belief that the key suppliers would maintain minimum standards for consumers would imply that the CMA could allow a retail level monopoly and that this would have no effect on consumers;
- (b) JD Sports' own arguments that it faced retail competition were inconsistent with an argument that there would be no meaningful impact on PQRS because the key suppliers constrain PQRS;
- (c) the key suppliers set a minimum standard for QRS and there was significant competition above this minimum, which is why the Parties offered different store experiences and invested at the retail level in their in-store environment, marketing etc, and that many of these investments were being made to improve the retail offer vis-à-vis retail competitors;
- (d) there was price competition across a wider set of products, and retailers such as Footasylum discounted products more often than JD Sports; and
- (e) JD Sports was arguing that no parameter of competition was responsive to any retail competition (other than dictated by suppliers) and that consequently there would be no impact on PQRS. There was a particularly high evidential threshold to show this, which JD Sports' submission had not met.

8.20 [REDACTED] said that 'some products are limited by supply constraints (for example: production capacity) and this [is] more prevalent for footwear than it is apparel.'

- 8.21 [X] said ‘From time to time we are refused products from [brands other than Nike and adidas] - not just sportswear brands. It’s part of the usual course of business. Often, it’s because there is demand for the most popular products, across multiple retailers, that exceeds the quantity manufactured or available in a territory.’
- 8.22 [X] stated that it had ‘very little leverage over the major suppliers (adidas and Nike) on these particular issues’ which included ‘enhanced margin discount support on selected styles, product access and distribution policies, level of marketing support, allocations (restriction of buying volume applied by suppliers)’.

Our assessment

- 8.23 In order to explore whether suppliers affect retail competition and to what extent, we have assessed a wide range of information provided by suppliers on their strategies, segmentation policies, standard terms and conditions and individual trade terms with retailers.
- 8.24 We have looked at restrictions imposed by suppliers on retailers and also at the influence exerted by suppliers over retailers. We recognise that these two areas are interrelated, but for ease of discussion have considered them in turn below. Lastly, we have considered whether supplier and consumer incentives are aligned.
- 8.25 This assessment is relevant to the Merger in two respects:
- (a) whether suppliers’ impact on retailers’ offerings through any restrictions and/or influence they have, is such that any remaining retail competitive interaction is largely immaterial (meaning any competition lost from the Merger may not be substantial); and
 - (b) whether suppliers are incentivised to constrain PQRS for the Merged Entity sufficiently, such that consumers would not be worse off post-Merger.

Restrictions

- 8.26 There are different ways in which suppliers can restrict retailers’ offerings in terms of their access to certain types and volumes of branded products, and aspects of retailers’ quality and service.
- 8.27 First, most suppliers in this market have some form of selective distribution arrangement which grants them a degree of control over where and how their products are resold. These arrangements enable suppliers to ensure a

minimum standard of quality and service in selling their products, whether in-store or online. Typically, under such an arrangement the supplier agrees to supply only those retailers which meet certain specified criteria (eg financial and reputational requirements). These arrangements are generally incorporated into the supplier's standard terms and conditions and individual trade terms with retailers. Further, some suppliers [X] include broad [X] cancellation provisions within their standard terms and conditions, permitting [X].¹⁶²

- 8.28 Second, suppliers in this market typically also have segmentation policies whereby authorised retailers are placed into different categories (eg sport or lifestyle/fashion-focused).¹⁶³ Suppliers tailor the product ranges available to each retailer which to some extent depends on the category. Within each category, some suppliers [X] define different tiers which further tailors the type and volume of products that are made available to retailers.¹⁶⁴ In addition, suppliers may assign retailers that operate different store formats into more than one category/tier. In that case, a store-by-store assessment is performed by the supplier and the categorisation/tiering applies to each specific store. Therefore, in practice a given retailer is generally able to select from a cut-down version of a given supplier's catalogue that contains only the products that are available to any applicable categories and/or tiers.
- 8.29 In light of the above, the process by which suppliers determine a given retailer's product access may be quite complicated in practice (as such decisions may take into account not only suppliers' segmentation policies and approach to tiering but also certain quality aspects of that retailer's store estate). While there is a broad understanding among retailers about a supplier's segmentation and where they sit within it, as noted above the criteria on which suppliers classify certain retailers into different categories or tiers is not a fully transparent process, and it is not always clear how this impacts the products that retailers can access. Nike's and adidas' segmentation policies appear to be less transparent than other suppliers', which means that it is harder for retailers to understand and engage with such policies.¹⁶⁵ There also appears to be limited ability for retailers to change their allocated segmentation category.¹⁶⁶

¹⁶² [X] has stated that 'Nike or Adidas can cancel [orders]: (i) at will; (ii) without any penalty; and (iii) without any reason.'

¹⁶³ For example, [X].

¹⁶⁴ For example, [X].

¹⁶⁵ CMA analysis of segmentation policies of [X]. [X] stated that it is 'only shown the products that Nike and Adidas choose to show [...], and these do not include those outside of its distribution allocation'. [X] stated that 'selective distribution agreements [...] are never shared with their retail partners & no details are ever disclosed. Requests by the retail customers to see these agreements are always refused.'

¹⁶⁶ For example, [X].

8.30 As such, a supplier's selective distribution arrangement and its segmentation decisions can have a direct impact on a given retailer's product access and, in turn, provide a constraint on its retail offering. We consider that, potentially, suppliers could threaten to cancel product orders or ultimately withdraw/lessen retailers' access to their products (for example through different segmentation) as a way to exert influence on retailers.

8.31 Suppliers vary in the level of restrictions they impose on retailers. Nike's and adidas' segmentation policies are materially more restrictive compared to those of smaller suppliers such as [REDACTED].¹⁶⁷ In particular, the evidence indicates that compared to smaller suppliers, Nike and adidas are [REDACTED]. We have received evidence on this from both of the Parties and other retailers, for example:

(a) JD Sports submitted that:

if a product that JD Sports would like to sell is not included in the catalogues, then [REDACTED]. However, in JD Sports' experience Nike and adidas are [REDACTED] grant access to products that are not already listed in the catalogues and JD Sports does not consider that [REDACTED]. These discussions are typically [REDACTED];¹⁶⁸

(b) Footasylum stated that a retailer '[REDACTED]' and that '[REDACTED]'; and

(c) [REDACTED].¹⁶⁹ [REDACTED]

8.32 In addition to restricting product and volume access, suppliers can impose some other types of restrictions affecting the quality of the consumer experience offered by retailers.¹⁷⁰ For example, [REDACTED].¹⁷¹

¹⁶⁷ CMA analysis of segmentation policies of [REDACTED].

¹⁶⁸ JD Sports stated that 'Other footwear suppliers can occasionally be [REDACTED] with the products that are available to retailers, but this is [REDACTED].... The process operates largely the same for non-Nike and adidas suppliers of apparel and accessories. However, usually the arrangements are [REDACTED], and JD Sports is [REDACTED]. JD Sports' expectation is that this is the same for other retailers.' We note that JD Sports has made other submissions on this issue which we have also taken into account in our assessment.

¹⁶⁹ [REDACTED] where it also stated that 'it does have some potential to negotiate with other smaller brands.' Other third party submissions include: [REDACTED] stated 'Despite making presentation after presentation to our key suppliers, and constantly asking for such top selling styles we are, without meaningful reason, always rebuffed. [REDACTED] submitted that it has more negotiating power with smaller brands than with more successful ones. [REDACTED] stated that [REDACTED].

¹⁷⁰ JD Sports submitted that 'Nike and adidas also exercise quality control over JD Sports' national-level, non-price offer, with high expectations regarding store and product presentation.' JD Sports Response to IS, paragraph 212. According to JD Sports, Nike and adidas do this by (i) [REDACTED], (ii) [REDACTED], and (iii) implicitly threatening to move the retailer to another segment if the quality of the stores decreases. Footasylum stated [REDACTED].

¹⁷¹ CMA analysis of selective distribution arrangements of [REDACTED].

- 8.33 However, we note that the restrictions we have observed arise from suppliers' own strategic decisions¹⁷² and that these selective distribution arrangements and segmentation policies could therefore be changed or amended by suppliers at any time post-Merger.¹⁷³
- 8.34 Where restrictions on quality are imposed under these selective distribution arrangements, their criteria typically establish a 'floor', above which retailers are free to determine how they operate, leaving scope for competition on a variety of aspects of their offering to take place. We have seen such variation by retailers. For example [REDACTED], yet retailers can and do compete to offer faster deliveries than these minimal requirements; for example, for orders below the free delivery threshold, Footasylum offers Next Day evening delivery at a cost of £6.99 and JD Sports offers Next Day evening delivery at a cost of £5.99.¹⁷⁴ JD Sports also offers unlimited Next Day delivery for the year for a one-off payment of £9.99 to members of its 'JDX' app.¹⁷⁵

Influence

- 8.35 In addition to these direct restrictions, suppliers may also indirectly influence retailers' offerings in several ways. In relation to pricing, recommended retail prices (RRPs) are usually included in the product catalogue presented to retailers. While retailers are contractually free to set their own prices, retailers told us that their starting point was typically the RRPs, although we note some discounting does occur. Some retailers told us that they felt some pressure (at least implicitly) to sell products at RRP. This pressure is perceived by retailers to be greater as regards Nike and adidas than other suppliers. This indicates that suppliers may influence to some extent the retail pricing of branded products.¹⁷⁶
- 8.36 Retailers may also typically negotiate individual discounts from suppliers' wholesale price, which are often subject to the retailer meeting certain conditions or KPIs. Such individual discounts (and the components of this) are typically set out in the distribution arrangement between the retailer and

¹⁷² Suppliers can change their retailer distribution strategy, for example Nike announced in 2017 (as reported by [trade press](#)) that it would be looking to globally focus on a number of its retailers as it believes they will be able to drive a differentiated consumer experience going forward. Nike submitted that this concentration of resources on selected retail partners was to accommodate shifting consumer preferences and to help retailers offer the best possible Nike products and services to the different consumer audiences they serve. [REDACTED].

¹⁷³ We note in this context that [REDACTED].

¹⁷⁴ Taken from [Footasylum's website](#) and [JD Sports' website](#) as of 30 January 2020.

¹⁷⁵ Taken from [JD Sports' website](#), February 2020.

¹⁷⁶ In this context, we note that the European Commission has recognised that, in certain circumstances, there may be legitimate reasons (including the efficient operation of a selective distribution arrangement) why a supplier may seek to have some form of control over retail pricing. See [European Commission Vertical Guidelines](#).

supplier. These may include meeting certain thresholds for volumes, growth, returned orders and store quality.

8.37 [REDACTED].¹⁷⁷ [REDACTED].¹⁷⁸

Incentives

8.38 We have considered whether suppliers' interests are fully aligned with those of consumers, meaning that the restrictions and/or influence they impose may not always result in benefits for consumers.

8.39 Suppliers may have an incentive to maintain retail competition on some elements (eg quality of stores, service levels and marketing campaigns). These are aspects of competition which suppliers may benefit from in terms of increased sales and maintaining their overall brand reputation. We have seen evidence that suppliers monitor retailers against each other and use this to benchmark retailers against each other to incentivise them to improve their offerings beyond the minimum standards set by suppliers. For example, there is evidence that suppliers compare and monitor retailers' store quality, app capabilities, payment and checkout, customer services, delivery, and compare the quality of marketing campaigns across retailers. We note these are aspects of competition that consumers value (see paragraph 8.59).

8.40 Where this occurs, suppliers (and consumers) benefit from competition which raises standards above and beyond the minimum level specified by suppliers. This illustrates the value of competition between retailers in delivering wider benefits for consumers.

8.41 However, while suppliers may benefit from retail competition, insofar as it delivers improvements in quality and service, this is not necessarily the case for price competition. This is because price competition may undermine consumers' perceptions of branded products (eg discounting of branded products may make them less of a 'status' product).

8.42 Insofar as suppliers' DTC channels compete directly with retailers, this may also undermine suppliers' incentives for encouraging increased retail competition. For example, we have seen some evidence indicating that suppliers seek to avoid multi-brand retailers taking sales from their own DTC

¹⁷⁷ [REDACTED].

¹⁷⁸ Though we note that we have seen an example of pushback from retailers against supplier [REDACTED]; our analysis of emails between JD Sports and adidas found an example of JD Sports refusing to have an [REDACTED], as it 'would not be "[REDACTED]" or "[REDACTED]" with customers and so would have undermined JD Sports' credibility with its consumers'.

in-store propositions by trying to influence retailers' store locations and openings.¹⁷⁹

- 8.43 Overall, we consider that suppliers have mixed incentives regarding retail competition, which means that they will not act in the best interests of consumers in all cases.

Provisional view on the role of suppliers

- 8.44 On the basis of the above, we consider that suppliers play an important role in shaping the retail market, in particular Nike and adidas given their current size and significance as suppliers in footwear.
- 8.45 Suppliers can restrict retailers' offerings through the products and volumes that retailers can access and some aspects of quality and service, which effectively establish a minimum standard for retailers. However, these restrictions arise primarily from suppliers' own strategic decisions and could be changed by suppliers at any time post-Merger. Suppliers can also exert some influence on retailers for example in terms of pricing, through providing the RRP for products, which retailers generally follow. They can also leverage their influence to encourage retailers to compete above and beyond their minimum standards, demonstrating the benefits of competition.
- 8.46 We consider that Nike and adidas impose the most restrictions and have the greatest influence, given their importance for retailers in this market. Other suppliers also have some influence in the retail market, but this is considerably less than Nike and adidas.
- 8.47 Further, we find that suppliers' incentives for retail competition are mixed and therefore their interests are not fully aligned with those of consumers. While suppliers benefit from some aspects of retail competition, such as improved quality and service, this is not necessarily the case on price competition. This is also the case for suppliers' DTC channels where they compete directly with retailers.
- 8.48 While we recognise that suppliers can exert some influence and restrict some aspects of retail competition, we provisionally find that retailers compete above and beyond this on important aspects of competition (which we have considered in the next section). In addition, we consider that suppliers are not fully incentivised to sufficiently restrict any deterioration in the Parties' offering post-Merger in order to protect the interests of consumers.

¹⁷⁹ [✂].

How retailers compete

8.49 We have considered in further detail how retailers compete in this market and the different aspects of the Parties' PQRS offering which could be flexed post-Merger to the detriment of consumers.

Parties' views

8.50 JD Sports submitted that the market was subject to intense market-wide rivalry,¹⁸⁰ and that it faced dynamic and disruptive competition from a wide range of other retailers.¹⁸¹

8.51 JD Sports also submitted that there were a number of reasons why the Merged Entity would have no incentive to worsen PQRS. These reasons included the aggregate competitive pressures of horizontal and vertical constraints from suppliers of branded products, intense competition from rivals across the spectrum of products the Parties offered and its view that Footasylum under the counterfactual was not a material constraint on JD Sports.

Third parties' views

8.52 Overall, third parties who offered a view submitted that the market was competitive and that retailers competed on different areas of PQRS, for example:

- (a) [redacted] submitted that the sports-inspired casual footwear market was competitive and comprised a range of competing retailers, from well-known high street retailers to small boutiques. It also submitted that suppliers competed in the market through their DTC offer, though less directly with multi-brand retailers;
- (b) [redacted] explained that the market had three tiers,¹⁸² and that the middle tier - 'sportswear-inspired fashion' was the most competitive. [redacted] submitted that within this middle tier, in which it and the Parties sat, retailers competed on their differentiated offer which was largely based on access to exclusive products;

¹⁸⁰ JD Sports, *Initial Phase 2 Submission*, paragraph 4(iii).

¹⁸¹ JD Sports, *Initial Phase 2 Submission*, Part C.

¹⁸² [redacted] noted that, in its view, there are three main tiers in the sports-inspired casualwear market in the UK. First, is the 'aspirational tier'; the 'middle tier' is 'sportswear-inspired fashion' and the final tier is the 'value', 'discount' or 'commodity' tier.

- (c) [redacted] submitted that retailers competed on different aspects of PQRS including: the size and location of new store openings; in-store environment, including through collaborations with suppliers to improve the in-store experience for consumers; loyalty schemes; marketing; and through access to 'exclusive' branded products. It asserted that retailers made such investments to strengthen their retail offer, which reflected the fact that there was significant retail competition in the market; and
- (d) [redacted] submitted that it and other retailers competed on price, particularly through student discounting.

Our assessment

- 8.53 We have considered the ways in which the Parties are able to, and do, compete on PQRS. This informs whether the Parties could change their offerings post-Merger to the detriment of consumers.
- 8.54 Regarding price, we have found that retailers generally price in line with RRP provided by suppliers, however they also undertake discounting. For example, a sizeable proportion of the Parties' sales in 2018 had been discounted:
- (a) the value (ie the difference in gross sales value against the sales value if sold at full price) of JD Sports' footwear clearance discounts amounted to £[redacted] ([redacted]% of its footwear net revenue);
 - (b) the value of JD Sports' footwear non-clearance discounts amounted to £[redacted] ([redacted]% of its footwear revenue);
 - (c) the value of Footasylum's total (footwear and apparel) clearance discounts were £[redacted] ([redacted]% of revenues); and
 - (d) the value of Footasylum's total (footwear and apparel) promotional discounts (temporary reductions in price) amounted to £[redacted] ([redacted]% of revenues).
- 8.55 The Parties are also generally free to choose the minimum spend thresholds on their online delivery services and the pricing of other delivery elements. They also choose whether to take part in cashback websites such as TopCashback and Quidco, which give discounts to consumers online.¹⁸³ The Parties also choose whether to offer student discounts and the level of those

¹⁸³ As at 23 January 2020, the Parties were offering cashback of between 4% and 12.15% to customers who click through these two websites (see for example JD Sports on [Topcashback](#) and [Quidco](#)) before completing their purchase on the Parties' websites as normal.

discounts, and whether to offer pay-later options to consumers via different platforms.

- 8.56 Similarly, the Parties compete on other aspects of their QRS offering. Examples of this include their marketing activity (which they spend a sizeable amount on¹⁸⁴ and is a key way for retailers to differentiate themselves), store opening times, refurbishment plans, store fittings, in-store queuing times, staff training and knowledgeability, website functionality, loyalty programmes, the range of brands offered and staffing levels and quality.
- 8.57 We have seen documentary evidence of the Parties monitoring some of these aspects of QRS (which we consider further in paragraphs 8.102 - 8.107), such as [redacted]; [redacted]. We have considered the level of this monitoring and its impact on the strategic decisions of the Parties, in paragraphs 8.108 - 8.111.
- 8.58 In addition to the competition which occurs on these existing aspects of competition, innovation also plays a role in this market in terms of changes and improvements to retailers' services and offerings. For example technological improvements such as: JD Sports' introduction of in-store kiosks, which give consumers access to a broader range of products than what is available in a specific store; improvements to website and app functionality and design; digital content displays in-stores; more efficient in-store product retrieval systems; and running different forms of marketing campaigns or partnerships with social media influencers and celebrities, including 'live streaming' of in-store promotion events online. While such innovation is, by its nature, hard to predict, we have seen retailers making improvements across these areas.¹⁸⁵
- 8.59 These aspects of competition are all features that consumers value and from which they benefit.¹⁸⁶ For example, our store exit survey shows that around a third of customers reported 'quality' or 'service' as a reason for choosing to shop at the Parties' stores.¹⁸⁷

¹⁸⁴ JD Sports' total marketing spend in calendar year 2019 was £[redacted] while Footasylum's total marketing spend in financial year 2019 was £[redacted].

¹⁸⁵ For example, the use of new technology, [redacted], and the introduction of in-store kiosks at JD Sports' stores.

¹⁸⁶ For example, an online survey by [redacted] used by JD Sports found that respondents ranked factors as most important in the following order: [redacted] in response to the question 'Which factors are most important to you when deciding where to buy footwear? Please rank up to 3 in order of importance, with 1 being the most important'. We also note that at its site visit, JD Sports submitted that it [redacted] UK as this is something its customers value and expect.

¹⁸⁷ [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

8.60 We would therefore expect an SLC would lead to the Parties not improving their offering as much or as quickly as they otherwise may have done absent the Merger, and this would not be in consumers' interests.

Provisional view on how retailers compete

8.61 We have found there is evidence that the Parties compete head-to-head, as well as with other competitors, on a multitude of different PQRS aspects in a bid to attract consumers and generate sales. Retail competition in this market manifests in many different ways and these aspects are important to consumers. Indeed, we consider that the evidence of the Parties' market monitoring discussed in paragraphs 8.102 - 8.107 indicates that there is retail level competition across all aspects of PQRS.

8.62 We note that although the Parties have emphasised that suppliers constrain competition, they have also submitted that post-Merger the intense competition from several rival retailers will constrain them. This supports our provisional view that, despite the impact of suppliers in this market, there is retail competition on various important aspects of PQRS which could be lost as a result of the Merger.

8.63 In subsequent sections we have looked at a range of evidence relating to the closeness of competition and the constraints from other retailers, to determine whether the Parties have the incentive and would be able to deteriorate these aspects of PQRS post-Merger.

Market shares

8.64 We looked at market shares as an indicator of the presence that different retailers have in the relevant market.

Parties' views

8.65 JD Sports submitted that, while market shares were not 'determinative' of unilateral effects, their quantification still mattered since it helped 'identify the structural change arising from the Merger and the national scale and identity of existing competitors'.

8.66 JD Sports submitted that the Merger had a modest effect on retail market concentration, and given that Footasylum had a share of selling Nike and adidas footwear in the UK of [redacted],¹⁸⁸ the Merger resulted in a small share

¹⁸⁸ JD Sports, *Initial Phase 2 Submission*, paragraph 7(b).

increment in the resale of Nike and adidas products. It told us that this was relevant because ‘the smaller the change of national market structure, and the more significant existing competitors, the most [sic] easily any lost constraint (even a relatively ‘close’ one) would be addressed, in aggregate, by the brands’ influence over the retail market and/or replaced by expansion, entry or repositioning of rivals’.

Our assessment

- 8.67 The Parties are both large national multi-brand retailers of sports-inspired casual footwear. We have estimated that JD Sports is the largest retailer in this market with a share of 20 - 30% ([REDACTED]%).^{189,190} Footasylum is smaller, with a share of 0 - 10% ([REDACTED]%). There are also a number of other retailers which have a presence in this market. Sports Direct has a share between 0 - 30% ([REDACTED]%), depending on how its revenues are categorised, and Nike has a share of 5 - 20% ([REDACTED]%), but no other retailer has a share above 10%. This wide variation in market shares estimates shows the difficulty in accurately estimating market shares in a differentiated market such as this.
- 8.68 We note the Parties submitted that the share increment was low and therefore any loss in constraint is more easily addressed. We have examined market shares primarily in order to identify which other retailers supply goods within the relevant markets and to facilitate a better understanding of how the Merger may affect the level of concentration within the relevant markets. However, we consider that these market shares give only a basic indication of the Parties’ presence and do not capture the closeness of competition between retailers in differentiated markets, such as this one (see Appendix G for further detail on the different share estimates and their limitations). We consider that other evidence is more informative on the closeness of competition, including the GUPPI which captures the significance of pricing incentives, than other potential measures, such as concentration measures.

¹⁸⁹ Our approach to calculating shares used two methodologies, each including or excluding different products. Ranges for retailers’ shares under each of these methodologies are set out in Appendix G, however, for presentational purposes we combine the two ranges for each retailer in this paragraph. The main driver of differences between the two methodologies was the extent to which Sports Direct’s footwear revenues are classified as sports-inspired casual footwear (and therefore included in the relevant market) or other footwear segments (and therefore not included). This is explained in more detail in Appendix G. We consider that further work to narrow down the precise market share is not necessary given the limited use to which we put this market share evidence.

¹⁹⁰ JD Sports is the largest retailer when the mid-point of our retailer’s range is used as the estimate for that retailer.

Retailers' offerings

8.69 One way for us to identify relevant potential competitors is to assess the similarities and differences between retailers' offerings. This provides an indication of their likely strength and closeness.

Parties' views

8.70 JD Sports submitted that, while there were similarities between the Parties' respective footwear offerings, these must not be overstated. In particular, it told us that there was vertical differentiation between the Parties in that [REDACTED], [REDACTED]. JD Sports submitted estimates of the degree of product overlap between the Parties and stated that this overlap was considerably lower from JD Sports' perspective because JD Sports' product range was considerably greater.¹⁹¹ JD Sports submitted that the overlapping products between JD Sports and Footasylum were available in a large number of other retailers and that a national analysis overstated the degree of overlap at the individual store level.

Our assessment

8.71 As discussed in chapters 2 and 7 there is a range of retailers in this market and below we have considered their propositions and how similar these are, for example in terms of their products, geographic coverage, and consumer base. We have also considered rankings of closeness between retailers as submitted by retailers themselves.

8.72 As part of this, we have examined supplier/product overlap and shares of branded products which provide some indication on the offerings of retailers and subsequently, their potential competitive constraints. We note that products do not have to be identical to be substitutes¹⁹² and that consumer behaviour and stated preferences as evidenced in our surveys, provide stronger evidence of the degree of substitutability of the Parties' offerings.

8.73 We consider that the more similar other retailers' offerings are to those of the Parties, the stronger their constraints are likely to be. For example, a retailer is likely to be a stronger constraint on the Parties if the following factors are similar to them: a retailer's overlap with the Parties across distribution

¹⁹¹ [REDACTED] JD Sports submitted that from JD Sports' perspective there was an unweighted overlap of [REDACTED]% and a sales-weighted overlap of [REDACTED]%, and that from Footasylum's perspective there was an unweighted overlap of [REDACTED]% and a sales-weighted overlap of [REDACTED]%.

¹⁹² The Parties also acknowledged this, albeit in the context of apparel. They submitted that '[REDACTED]'.

channels;¹⁹³ its access to and volumes of relevant branded products; how appealing its retail fascia is to the Parties' customers; and how appealing its in-store and online shopping experience is to the Parties' customers.

The Parties

- 8.74 The Parties both have an in-store and an online offering. There is a high degree of geographic overlap of the Parties' physical stores; all Footasylum stores overlap with at least one JD Sports store.¹⁹⁴ Both of their online offerings are important channels for their respective businesses (representing [X] % of JD Sports' revenue and [X] % of Footasylum's revenue, see paragraph 7.86). While a lower proportion of its revenue, JD Sports has a significant online presence. For example, our online survey results suggest that of the Footasylum customers who had looked online somewhere other than Footasylum's own website before purchasing in-store at Footasylum, 74% had looked JD Sports' website.
- 8.75 The Parties both target a similar demographic - 16-24 year old consumers with a focus on males, although the focus on males is more pronounced for Footasylum.¹⁹⁵ The majority of the footwear the Parties sell is [X] footwear, although they both also sell [X], [X], [X] and [X].¹⁹⁶ JD Sports submitted that more than half of its customers were [X], although we note that this might be a reflection of the Parties' store environments appealing differently to the different genders, and in any case [X] footwear sales make up a minority its sales.
- 8.76 Both Parties stock a similar range of branded footwear, and a large proportion of these are Nike and, to a lesser extent, adidas products. As set out in Table 8.1, for JD Sports, [X] % of its total footwear sales came from Nike and [X] % from adidas. For Footasylum, [X] % of its total footwear sales came from Nike and [X] % from adidas.¹⁹⁷

¹⁹³ Through a presence in both distribution channels (in-store and online) and/or greater geographic overlap with the Parties in-store.

¹⁹⁴ Where overlap is defined as being present within a 20-minute drivetime. See [Phase 1 decision](#), paragraphs 140-142.

¹⁹⁵ JD Sports, [Initial Phase 2 Submission](#), paragraphs 6 and 14.

¹⁹⁶ JD Sports, Initial Phase 2 Submission, paragraph (6)(a). JD Sports' 2018 footwear sales were split, [X] % men's footwear, [X] % junior/infant footwear, [X] % women's footwear. Footasylum's 2018 footwear sales were split, [X] % men's footwear, [X] % junior/infant footwear, [X] % women's footwear.

¹⁹⁷ We also examined the sales-weighted brand cross-over at phase 1 and found a crossover of [X] % from JD Sports' perspective and [X] % from Footasylum's perspective. See [phase 1 decision](#), Table 5.

Table 8.1: Suppliers' share of the Parties' sports-inspired casual footwear revenues (2018)

<i>JD Sports</i>				<i>Footasylum</i>			
1		[X]	[X]	1		[X]	[X]
2		[X]	[X]	2		[X]	[X]
3		[X]	[X]	3		[X]	[X]
4		[X]	[X]	4		[X]	[X]
5		[X]	[X]	5		[X]	[X]
6		[X]	[X]	6		[X]	[X]
7		[X]	[X]	7		[X]	[X]
8		[X]	[X]	8		[X]	[X]
9		[X]	[X]	9		[X]	[X]
10		[X]	[X]	10		[X]	[X]
		[X]	[X]			[X]	[X]
Total			100%	Total			100%

Source: CMA analysis of Parties' data.

8.77 As discussed in chapter 7, we recognise that there is a spectrum of different types of footwear. Each of the Parties has access to some of the higher-tier footwear products that are not available to all retailers. Since Nike and adidas are the most important brands to the Parties, we have considered whether their offering of Nike and adidas footwear products is similar (see Table 8.2 and Table 8.3, and Appendix G for more detail).¹⁹⁸

Table 8.2: Number of Nike footwear products sold by the Parties that were also sold by other retailers (6 months to June 2019)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[X]		Footasylum	[X]	
Retailer 1	[X]	56%	Retailer 1	[X]	83%
Retailer 2	[X]	40%	Retailer 2	[X]	78%
Retailer 3	[X]	33%	Retailer 3	[X]	62%
Retailer 4	[X]	32%	Retailer 4	[X]	41%
Retailer 5	[X]	32%	Retailer 5	[X]	39%
Retailer 6	[X]	28%	Retailer 6	[X]	32%
Retailer 7	[X]	22%	Retailer 7	[X]	30%
Retailer 8	[X]	19%	Retailer 8	[X]	26%
Retailer 9	[X]	18%	Retailer 9	[X]	25%
Retailer 10	[X]	16%	Retailer 10	[X]	24%

Source: CMA analysis of data received from Nike and adidas.

¹⁹⁸ In our analysis we have treated each colourway (but not size) of a separate footwear item as a distinct product. We also examined a more aggregated product level (treating different colourways as the same product) and found similar results.

Table 8.3: Number of adidas footwear products sold by the Parties that were also sold by other retailers (6 months to June 2019)

Retailer	Number of products	Proportion of products	Retailer	Number of products	Proportion of products
JD Sports	[X]		Footasylum	[X]	
Retailer 1	[X]	24%	Retailer 1	[X]	51%
Retailer 2	[X]	24%	Retailer 2	[X]	42%
Retailer 3	[X]	22%	Retailer 3	[X]	38%
Retailer 4	[X]	20%	Retailer 4	[X]	36%
Retailer 5	[X]	20%	Retailer 5	[X]	31%
Retailer 6	[X]	17%	Retailer 6	[X]	28%
Retailer 7	[X]	15%	Retailer 7	[X]	28%
Retailer 8	[X]	13%	Retailer 8	[X]	25%
Retailer 9	[X]	12%	Retailer 9	[X]	11%
Retailer 10	[X]	6%	Retailer 10	[X]	4%

Source: CMA analysis of data received from Nike and adidas.

8.78 We found that [X]% of [X] Nike footwear products and [X]% of its adidas footwear products were available at [X], while [X]% of [X] Nike footwear products and [X]% of its adidas footwear products were available at [X]. [X] is the retailer which has the highest overlap with [X] (ie more products available at [X] were also available at [X] than any other retailer, excluding the DTC retailer itself). [X] is the retailer with the fourth highest overlap with [X]; behind [X], [X] and [X].¹⁹⁹

8.79 Of the Nike and adidas footwear products sold by JD Sports, [X] were sold by other retailers. Of the smaller number of products sold by Footasylum, [X] were also sold by other retailers.

8.80 The Parties submitted that this type of analysis overstated the degree of overlap at a local store level. We recognise that could be the case for the in-store segment, but it does not apply to their online offerings, or where their online offerings are available in-store (eg through JD Sports' in-store kiosks). Further, we also note that the scope for overstatement would apply to all retailers assessed.

8.81 Overall, we provisionally find that the Parties have very similar footwear offerings. While neither Party offers all of the products offered by the other, they both have a large proportion of Nike and adidas footwear products and have a large degree of overlap in these products, particularly for Footasylum to JD Sports.

8.82 As discussed in paragraph 8.93 we asked third parties to rank the Parties in terms of their closeness of competition to each other.²⁰⁰ We have assessed

¹⁹⁹ The data received from Nike and adidas reflected the location of their accounts and not necessarily where sales of products were made. As such, if those retailers with [X], did not offer all of their products [X], their overlaps may be overestimated.

²⁰⁰ Closeness in this context was measured on a one (not close at all) to 10 (very close) scale

their views on rankings by examining the average scores they gave in terms of closeness of competition. The average score out of 10 given by third parties in response to the question on closeness of competition between the Parties was 8.5 (Footasylum on JD Sports) and 8.2 (JD Sports on Footasylum) for the retail supply of sports-inspired casual footwear.²⁰¹ This demonstrates that third parties view JD Sports and Footasylum as close competitors.

Other retailers

- 8.83 We have also considered the offerings of other prominent retailers of sports-inspired casual footwear. In subsequent sections we have assessed further evidence of the constraint they impose on the Parties.
- 8.84 Foot Locker is a large global retailer of sports-inspired casual footwear. In the UK, its store estate is of comparable size to Footasylum but smaller than that of JD Sports. It also has an online channel, which accounts for [redacted]% of its footwear sales. It is predominately focused on footwear and has access to some of the higher-tier footwear products. It has [redacted] overlap of branded products with both Parties (eg for Nike products a [redacted]% overlap with JD Sports and [redacted]% overlap with Footasylum). [redacted] the majority of its customers are male ([redacted]%). This suggests it has a similar offering to the Parties (or at least Footasylum) by size.
- 8.85 Sports Direct is a major retailer in the UK. It has a large number of stores (approximately 500) and operates online. It has [redacted] overlap with the Parties (eg for Nike products a [redacted]% overlap with JD Sports and [redacted]% overlap with Footasylum), albeit this is [redacted] compared to other retailers. [redacted].²⁰² This suggests that despite its size, there are some important differences in Sports Direct's offering in comparison with the Parties, and we explore further evidence on this in later sections.
- 8.86 Schuh, Office and Sole Trader are all multi-brand retailers with in-store and online channels that focus on footwear, including both sports-inspired casual footwear and more general types of footwear. [redacted]. Office has two fascia, Office and Offspring, each of which has its own website and stores. Office targets predominately female consumers. [redacted] demographic, aged between 16 and 45 year olds and both genders. Office has [redacted] product overlap with the Parties for Nike products and along with [redacted] overlap of adidas products. [redacted]

²⁰¹ These estimates differ from those given in the Phase 1 decision, paragraph 25, due to addition of further retailer rankings gathered at phase 2; CMA analysis of third party questionnaires during phase 1 and phase 2.

²⁰² [redacted].

has [redacted] product overlap with the Parties. This indicates that these retailers have some similarity to the Parties' offerings but there are differences.

- 8.87 ASOS is an online-only retailer that has been growing in its sales of sports-inspired casual footwear (it started selling sports-inspired products only in 2016).²⁰³ It sells a broad range of products, including sports-inspired casual footwear, and submitted that its target is both males and females [redacted] that its sales were [redacted]. It has [redacted] product overlap with both Parties (eg for Nike products a [redacted]% overlap with JD Sports and [redacted]% overlap with Footasylum). This indicates that [redacted], its sports-inspired footwear offering is different to that of the Parties.
- 8.88 There are various other online-only retailers. For example, Zalando sells a broad range of products, including sports-inspired casual footwear, and is active in a number of European markets.²⁰⁴ Its marketing is principally aimed at 20 to 49 year olds, and the majority of its customers are females aged 25 to 55 (56% for footwear). It [redacted] product overlap with both Parties (eg for Nike products a [redacted]% overlap with JD Sports and [redacted]% overlap with Footasylum). [redacted] it is focused on a different consumer market and has a much smaller presence in the UK.
- 8.89 Amazon also sells a broad range of products, including sports-inspired casual footwear, although we note it does not currently directly supply products from Nike or adidas.²⁰⁵ It does not target a specific demographic. This indicates that its offering is relatively different from that of the Parties.
- 8.90 Suppliers including Nike and adidas have been growing their retail sales through their DTC channels. They both have online offerings that deliver to all parts of the UK.²⁰⁶ They both have a number of physical stores, a few of which are large flagship stores, but the majority of which are forms of factory or clearance stores [redacted].²⁰⁷ The geographic overlap of these stores to the Parties' stores is also low.²⁰⁸ Since these suppliers are also brands themselves, they typically offer all of their own products online, and more than

²⁰³ [redacted].

²⁰⁴ Zalando is active in 15 European countries and is Europe's biggest online fashion retailer.

²⁰⁵ Amazon stated that it '[redacted]'. We also note that as reported (for example as reported by Bloomberg in November 2019), Nike announced that it's ending a pilot programme with Amazon launched in 2017, which attempted to stop counterfeit third party sellers by giving Amazon access to Nike products.

²⁰⁶ [redacted].

²⁰⁷ Nike has 42 stores in the UK, of which only five are core or flagship stores, whereas the remaining 37 are Factory Outlet stores. Nike estimated that a Factory Outlet store would stock around [redacted]%-[redacted]% of clearance products, whereas other non-outlet stores typically stock only [redacted]% of clearance products (Where clearance products are defined as products which have become permanently discounted below RRP). adidas has 26 stores, four of which are flagship stores, three are core stores, two brand centres and the rest are Factory Outlets.

²⁰⁸ Based on a 20-minute drive-time catchment area, we calculated that [redacted]% of Footasylum's stores overlap with a Nike store and [redacted]% with an adidas store; [redacted]% and [redacted]% for JD Sports, respectively.

they make available to their retailer customers. However, as a mono-brand footwear and apparel proposition they do not offer other brands alongside these products. Overall, we consider that there Nike and adidas have some similarities to Parties but there are also some important differences.

- 8.91 There are a number of other retailers who we consider have very different offerings to either of the Parties, although we have considered further evidence on their constraints in subsequent sections:
- (a) Deichmann is a general retailer for footwear and not focused solely on sports-inspired footwear. It currently has 102 stores open in the UK. Deichmann submitted that it estimated that 75% of its sport-inspired footwear was sold to females. It targets all ages but mainly less affluent consumers. Much like Sports Direct, its offering could be characterised as more of a value proposition than either of the Parties. This indicates that its offering is relatively different from that of either of the Parties;
 - (b) Decathlon and D W Sports are sports-led retailers who sell sports-inspired casual footwear. Decathlon is a large global sporting goods retailer that sells a broad range of products, including its own brands. It has 44 stores in the UK, which tend to be very large, and an online presence. D W Sports operates 76 stores, many of which are attached to fitness clubs, and has an online presence. This indicates that these retailers are more relevant to sports-performance and have a very different offering to either of the Parties;
 - (c) there are a number of department stores selling sports-inspired casual footwear, including Debenhams and John Lewis. Debenhams has 162 stores²⁰⁹ and an online presence; 85% of its customers are female, and 79% are aged 35 and above. John Lewis operates 51 stores and has an online presence. It also has a high proportion of female customers; and
 - (d) in addition to Nike and adidas, Puma and The North Face also sell DTC. Puma has six stores in the UK and an online presence. The North Face has 28 stores and an online presence.
- 8.92 We asked third parties (covering both competitors and suppliers) to rank other retailers in terms of their closeness of competition to each of the Parties and to other retailers, as shown in Table 8.4.

²⁰⁹ Collectively in the UK, Republic of Ireland and Denmark.

Table 8.4: Third parties' rankings of retailers' closeness to the Parties in footwear²¹⁰

Retailers	Number of responses included in closeness average	Number of mentions included in closeness average	Closeness to:	
			JD Sports	Footasylum
The Parties				
JD Sports	21	-	-	8.2
Footasylum	21	-	8.5	-
Third parties				
Foot Locker	-	11	8.7	8.4
Sports Direct	-	11	5.7	5.0
ASOS	-	10	6.8	6.7
Schuh	-	10	5.0	5.2
Office/Offspring	-	8	7.8	7.8
Amazon	-	3	7.0	7.0
Shop Direct	-	3	7.0	7.0
Nike	-	3	9.0	8.7
adidas	-	3	9.0	8.7
Footpatrol	-	3	6.5	6.5

Notes:-

Rankings are on a scale of 1 to 10, with 10 being the closest and 1 being the least close.

Our third party questionnaires asked third parties directly to provide a ranking of the Parties' closeness to each other. The table reports the number of third parties that responded to this question and the average ranking of closeness to each other.

Our questionnaire, also asked third parties to provide rankings for other retailers, but the identities of these other retailers were unprompted. For these retailers, the table reports the number of mentions and the reported ranking of closeness to the Parties. The number of mentions is therefore relevant to which retailers third parties considered they should raise, however closeness of competition is a more direct measure of the significance of the mentioned retailers in terms of competition. Views do not include third parties' views of their own position relative to the Parties.

Only retailers mentioned by three or more third parties are included. Footpatrol is a JD Sports' fascia.

8.93 We asked third parties to score retailers in the market in terms of closeness of competition to each of the Parties. The Parties scored highly, as did Foot Locker, Nike and adidas. However, Nike and adidas were all mentioned by fewer third parties than Sports Direct which was mentioned the same amount of times as Foot Locker but given a lower score than the Parties, Foot Locker and other retailers. ASOS and Schuh were also mentioned fairly frequently by third parties but given a lower score than the Parties and other retailers.

Provisional view on retailers' offerings

8.94 As noted above, our assessment of retailers' offerings has given an indication of which retailers have a similar offering and therefore an indication of how closely they compete with other retailers. Both Parties stock a similar range of branded footwear, and a large proportion of these are Nike and, to a lesser extent, adidas products. We find that the Parties have a very similar offering in footwear. Foot Locker has a similar offering to the Parties. Nike, adidas, ASOS, Office and Schuh also have some similarities to the Parties although to a lesser extent than the Parties to each other. Other retailers have less similar offerings.

²¹⁰ These estimates differ from those given in the *Phase 1 decision*, paragraph 25, due to addition of further retailer rankings gathered at phase 2; CMA analysis of third party questionnaires during phase 1 and phase 2.

8.95 We asked third parties to score retailers in the market in terms of closeness of competition to each of the Parties. The Parties were scored highly, as was Foot Locker (Nike and adidas were also scored highly but mentioned by far fewer third parties). We therefore consider that third parties view the Parties as competing closely against each other with few other close constraints, except for Foot Locker.

Internal documents

8.96 We have analysed a large number of the Parties' internal documents, which, in our view, are highly informative evidence on how the Parties viewed the market and their competitors in the ordinary course of their business prior to the Merger.²¹¹

Parties' views

8.97 JD Sports submitted that while the Parties referenced each other in their internal documents, these documents simply reflected the respective Party's monitoring of market activities. It said that many of its documents discussed a wide range of competitors in addition to Footasylum. Further, it submitted that [redacted]. It also submitted that closeness of competition was not a simple function of the number of mentions in or across a given set of internal documents.

Our assessment

8.98 We have found evidence that the Parties regularly monitor both each other and other retailers. References to competitor retailers in internal documents are not usually separated for footwear and apparel, nor for in-store and online, but rather cover competing retailers in general and as such they tell us about competition in both of the relevant markets.

8.99 As explained in chapter 6, we have undertaken a targeted and in-depth review of a sub-set of the Parties' most relevant internal documents. We have carried out an overall assessment of the documents as part of this in-depth review, rather than applying any mechanistic or arithmetic assessment (eg by adding up mentions or counts of competitors). In our review, we have been cognisant of the purpose of each document, its author and its audience. In general, we

²¹¹ In our requests for internal documents from the Parties we generally defined internal documents as 'Internal documents refer to documents in any form (including, but not necessarily limited to, reports, presentations, studies, internal analyses, analyst reports, industry/market reports or analysis, including customer research and pricing studies) which have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of [either Party] (whether prepared internally or by external consultants).' The timeframes and precise definitions varied depending on each specific question, but generally covered the last two years.

have placed more weight on documents prepared by or for more senior levels of decision making within the Parties.

8.100 The internal documents provided by the Parties included the following categories of documents:

(a) from JD Sports: [REDACTED]; and

(b) from Footasylum: [REDACTED].

8.101 Both Parties also provided other documents that did not belong to any of the categories set out above, but that either they considered relevant for the CMA's merger inquiry or fell within the scope of the CMA's information requests.

8.102 For Footasylum, we have found that JD Sports is highly prominent in the monitoring that it conducts:

(a) [REDACTED] reports by executive management [REDACTED] to senior management and heads of department (and are, therefore, particularly useful insight into the issues which inform Footasylum's strategic thinking). [REDACTED];

(b) [REDACTED]²¹² cover in some detail national activity by [REDACTED] produced for senior management and heads of department, also track the [REDACTED], [REDACTED];

(c) [REDACTED] record [REDACTED], [REDACTED]. These documents are prepared by Footasylum's Retail Sales and Operations Manager for senior management and heads of department. [REDACTED]. For example, one document stated: '[REDACTED]. [REDACTED] is often monitored in these documents, but to a lesser extent than [REDACTED]. There are a limited number of other such documents that mention other retailers, [REDACTED]. For example, one document states '[REDACTED]';

(d) [REDACTED], prepared by Footasylum's Head of Retail for senior management and heads of department, [REDACTED]. Retailers such as [REDACTED];

(e) [REDACTED] produced by Footasylum's CFO to report Footasylum's financial information to its Board. [REDACTED], [REDACTED]. An example of [REDACTED];

(f) [REDACTED] from senior area managers included a relatively small section on competitors.²¹³ The retailers included are: [REDACTED]. Footasylum submitted that [REDACTED];

²¹² Produced by the Head of eCommerce for Senior Management and Heads of Department.

²¹³ Produced by Retail Sales and Operations Managers for senior management and heads of departments.

- (g) reports from Footasylum's management visits to some stores [REDACTED].²¹⁴ We have identified [REDACTED] of these documents, within which [REDACTED];²¹⁵
- (h) several Footasylum internal documents refer to [REDACTED] as being Footasylum's key competitor; for example, one document notes '[REDACTED]'. This position is also set out in Footasylum's annual report for 2018, in which it is noted that '[w]ithin our overall market, Footasylum is in the competitive mainstream for both footwear and apparel, competing most frequently against retailers such as ASOS and JD Sports';²¹⁶
- (i) several documents which focused on [REDACTED];
- (j) several documents refer to the impact of [REDACTED]. For example, one document [REDACTED]. In our view, the fact that the Parties [REDACTED]. Other documents note that Footasylum [REDACTED];
- (k) [REDACTED] prepared by Footasylum's Retail Sales and Operations Manager for senior management and heads of department, [REDACTED]. [REDACTED]. Other references to [REDACTED]. The same document notes [REDACTED]. Another document states that [REDACTED] The same document [REDACTED].';
- (l) '[REDACTED] prepared for senior management and heads of department, provide [REDACTED]. The Parties have suggested that these documents [REDACTED]. From our assessment however, we note that [REDACTED]. One such document [REDACTED];
- (m) in other documents, [REDACTED], for instance one document states that: [REDACTED]. In this same document, [REDACTED]. Although we note that these documents [REDACTED];
- (n) an internal presentation to the Footasylum Board from the management team stated that '[REDACTED]'. An internal document which [REDACTED];
- (o) an internal document dated October 2018 prepared by the Head of Retail [REDACTED]. The document states that [REDACTED]%;²¹⁷
- (p) in a presentation prepared by Footasylum's Retail Sales and Operations Manager for senior management and heads of department [REDACTED];

²¹⁴ Produced by a Merchandising employee for the Heads of Merchandising, Buying, Retail & Ecommerce and Marketing.

²¹⁵ We agree with the Parties that a simple count of mentions of retailers in internal documents is not necessarily in of itself informative of closeness of competition. Nonetheless, in some circumstances such as these, when taken together with the documents' content and wider context, this is informative as to the nature and extent of monitoring of that retailer or supplier by one of the Parties.

²¹⁶ [Footasylum Annual Report 2018](#).

²¹⁷ We note that the analysis presented in the Footasylum document may be biased due to the other factors that are not accounted for. [REDACTED].

- (q) one document contained notes prepared by Footasylum's Buying and Marketing Director highlighting that [REDACTED]. It states: '[REDACTED]';²¹⁸
- (r) an internal document prepared by Footasylum's Buying and Marketing Director for the Board, [REDACTED]; and
- (s) [REDACTED] notes the following: '[REDACTED]'.

8.103 We consider that the nature and magnitude of the monitoring evidenced in Footasylum's internal documents demonstrates that JD Sports is the competitor most closely monitored by Footasylum. These documents show that Footasylum also closely monitors Foot Locker (though not to the same extent as JD Sports). We saw some monitoring by Footasylum of a wide range of other retailers, including ASOS, Schuh, Office, H&M, Nike, adidas, River Island, Next, Sports Direct, and Topshop/Topman, but this was to a lesser extent.

8.104 For JD Sports, we have found that Footasylum is also prominent in the monitoring that it conducts alongside other retailers:

- (a) JD Sports submitted weekly reports referred to as [REDACTED] which monitor elements of its [REDACTED]. These documents were described by JD Sports as being prepared by and for its multi-channel team. These reports typically include [REDACTED]. In examining [REDACTED] are examined individually and then [REDACTED] are all examined to a higher level;
- (b) [REDACTED] are used by JD Sports in the ordinary course of business to analyse the impact of competitor store openings, closures and refurbishments at a local level. This analysis is prepared for the property, merchandising, retail, marketing and finance teams at JD Sports and compiled on a monthly basis. We have considered these documents to be particularly relevant as they specifically assess the constraint of other competitors' stores on JD Sports: each report [REDACTED]. In these documents, JD Sports consistently monitors [REDACTED] together with [REDACTED].²¹⁹ JD Sports submitted [REDACTED]. Although we recognise that there are some limitations to this analysis and its interpretation,²²⁰ we consider that these documents provide evidence that [REDACTED] stores mostly have [REDACTED] on [REDACTED], although [REDACTED] has [REDACTED]. The fact that several of these impacts have [REDACTED] for JD Sports suggests that confounding factors (eg local demand) might affect these results;

²¹⁸ Notes of the Buying and Marketing Director produced for the Board of Directors.

²¹⁹ [REDACTED] and as such we have not given them the same weight.

²²⁰ The CMA recognises that this analysis may have certain limitations including: [REDACTED].

- (c) [REDACTED] prepared by JD Sports' retail marketing team record data for general information-gathering purposes on trading conditions, as well as noting other factors – [REDACTED]. In these documents, JD Sports monitors [REDACTED] alongside [REDACTED]. However, we note that when discussing JD Sports' marketing activities in the UK, some of these reports have a particularly targeted focus on the impact of [REDACTED] on [REDACTED]. Certain documents mention [REDACTED]; with the exception of one document in which [REDACTED]. When discussing UK football drivers, some of these reports note that [REDACTED]. There are also certain reports which mention [REDACTED]. In another document, a presentation prepared by the [REDACTED] for JD Sports, the focus is on [REDACTED] and no other retailer is assessed;
- (d) in a number of other documents, [REDACTED]. These documents cover a range of areas, including: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. We also note that [REDACTED];
- (e) two internal presentations prepared by the merchandising team for JD Sports' Merchandising Director dated 2017 and 2018 [REDACTED]. The presentation [REDACTED]. JD Sports submitted to us that [REDACTED];
- (f) another internal document prepared by and for the multi-channel team [REDACTED]. The document [REDACTED];²²¹
- (g) in some documents, [REDACTED]. It also has some presentations [REDACTED]; and
- (h) JD Sports also submitted [REDACTED]. This data was gathered by JD Sports in the ordinary course of business rather than for the purposes of the Merger. We note that [REDACTED]). The analysis may be subject to some limitations [REDACTED]). For these reasons, we have given limited weight to these results, but note [REDACTED].

8.105 We consider that the nature and extent of the monitoring evidenced in JD Sports' internal documents demonstrates that Footasylum is one of the competitors most closely monitored by JD Sports, alongside Foot Locker, ASOS, Nike and adidas. Those documents show some monitoring by JD Sports of other retailers including Sports Direct, Schuh, Office, Zalando and End, though to a materially lesser extent.

8.106 In addition to the volume of evidence set out above showing the Parties closely monitoring each other, we have seen evidence that such monitoring is likely to inform the Parties' strategic decision making and is sometimes followed directly by responsive actions. For example:

²²¹ [REDACTED].

- (a) a series of internal documents show JD Sports' internal discussions on [REDACTED] for its JD Sports and Size? fasciae. One document states that ASOS is '[REDACTED]' (with [REDACTED]% 'share') and that '[REDACTED]'. The document concludes [REDACTED]. Another subsequent internal document states that, [REDACTED], 'JD [Sports]' share [REDACTED] [REDACTED].';
- (b) another internal document from JD Sports focusing on [REDACTED] notes among other points that it is an '[REDACTED]' and '[REDACTED]'. The end of the document sets out 18 actions under the heading '[REDACTED]';
- (c) an internal document included Footasylum's '[REDACTED]'; and
- (d) an internal document from JD Sports considers which other retailers signed up to pay-later providers. Among them are [REDACTED] (with [REDACTED]), [REDACTED], [REDACTED] and [REDACTED] (with [REDACTED]).

8.107 These documents show that, in some instances, the Parties' monitoring of each other and of other retailers is likely to have influenced their strategic decisions and was sometimes followed by competitive responses to each other (for example around student discounts and pay-later offers).

Provisional view on internal documents

8.108 The Parties submitted that references to each other in internal documents were merely part of general market monitoring and, as such, this was not an indicator of closeness of competition. We disagree with the Parties as we consider that such detailed monitoring is in itself evidence of closeness of competition. We do not consider it would be commercially rational to engage in detailed monitoring of retailers which the Parties did not consider to be competitors.

8.109 Having considered the nature and extent of the Parties' monitoring of one another and other retailers in their internal documents in the round, we provisionally find that such monitoring indicates a close competitive relationship between the Parties, in particular, that JD Sports imposes a strong constraint on Footasylum. In this context, we note that there is evidence that, in some instances, the Parties' monitoring of each other and other retailers is likely to have influenced their strategic decisions and competitive responses (see paragraphs 8.106 and 8.107).

8.110 In particular, we provisionally find that:

- (a) Footasylum's documents, taken together, demonstrate that Footasylum sees JD Sports as its closest competitor with only Foot Locker also seen as a close competitor; and

(b) JD Sports' documents, taken together, demonstrate that JD Sports sees Footasylum as a close competitor alongside Foot Locker, ASOS, Nike and adidas.

8.111 We consider that these documents show a low degree of monitoring by the Parties of a range of other competitors, including Schuh, Office, H&M, River Island, Next, Sports Direct, and Topshop/Topman. It is notable that Sports Direct, which is a large retailer in the industry, is monitored so little, especially by Footasylum. More generalist retailers, including department stores, are hardly mentioned at all.

Surveys

8.112 The way that retailers compete in this market and the extent of their constraint on each other is influenced by consumer preferences.

8.113 As explained in chapter 6, we have undertaken two large surveys of the Parties' customers to understand their views on how they purchase the Parties' products, and what alternatives they would consider if the retailer and/or channel that they shopped in was no longer available. We have not placed full evidential weight on the online survey results due to the low response rate (see paragraph 6.26). Further detail on the surveys and their methodology is set out in Appendix E.

Parties' views

8.114 The Parties made a number of submissions on the survey questions, design and robustness of the survey results, including on the phrasing of the diversion questions and particularly in relation to the store exit survey. These submissions are summarised here and set out in more detail in Appendix E, alongside our assessment of them.

8.115 The Parties submitted that the number of stores sampled was too limited to be representative of the UK store network and thus insufficient to draw robust estimates of diversion, and that the diversion question should have asked specific questions about the products bought, rather than about the basket, as the diversion responses would be clearer and more economically meaningful when customers considered and compared specific individual items, rather than assessed the overall choice and value of their basket.

8.116 The Parties also submitted that they had specific concerns about the wording of some of the questions, which could have led to bias in the survey results. In particular, they considered that the use of the word 'today' in the diversion question, may have limited the options that customers would consider and

reduced the range of retailers the customer could consider to be viable alternative.

8.117 The Parties submitted that they had the following conceptual concerns about the reliability of the diversion results:

- (a) that diversion between the Parties did not necessarily imply diversion of sales since there was no guarantee the customer would find a suitable product at the alternative store;
- (b) that analyses of footwear and apparel customers should have excluded customers who purchased both footwear and apparel together because they were able to give only a single response to our questions; and
- (c) that the question we had used to identify marginal customers was based on a price rise and this may not be appropriate unless there was a combined theory of harm (between online and in-store).

Our assessment

8.118 The evidence from the store exit survey is highly informative of the constraint that the Parties place on each other and the constraint from other retailers, as this is derived from the views of the Parties' customers on which retailer is their next best alternative.

8.119 We have first reviewed customers' reasons for shopping with the Parties to indicate what customers value, then their search behaviour to indicate which retailers they look at before purchase (if any) and finally their stated next best alternatives (diversion) to indicate which retailers constrain each of the Parties.

Survey results for footwear customer shopping behaviour

8.120 Our surveys asked the Parties' customers why they had chosen to shop with the Parties.²²² We found that footwear customers reported a wide range of reasons for purchasing from the Parties, covering both price and non-price features of the Parties' offerings in both surveys.

8.121 Our store exit survey found that 26% of Footasylum's footwear customers and 13% of JD Sports' footwear customers mentioned 'good prices' as the main

²²² In the case of the exit survey, respondents were not prompted in any way, while for the online survey respondents were presented with a comprehensive list.

reason to shop there.²²³ Our online survey suggests that price is the most important factor for nearly half (54%) of Footasylum footwear customers and two-fifths (41%) of JD Sports' footwear customers when choosing to shop on that Party's website.²²⁴

8.122 Footwear customers also find quality and service to be of value. Indeed, more JD Sports in-store footwear customers stated that their main reason to shop at JD Sports is more to do with either the quality, range or the service provided, than its prices.²²⁵

8.123 Product range is also important to the Parties' customers. When asked about the main reason that led them to buy at Footasylum, 34% of in-store footwear customers gave reasons associated with a good product range (eg good range of branded products, wide range of products, products that other stores do not have).²²⁶ The percentage is even higher for JD Sports (42%). Good product range is mentioned by around two-thirds of respondents as the main reason why they had shopped at either JD Sports (63%) or Footasylum (64%) online.²²⁷

8.124 Our store exit survey asked footwear customers what actions they had taken before visiting the JD Sports or Footasylum store where they made their purchase. A sizeable minority of footwear customers had looked at another physical store (19% of JD Sports' footwear customers and 39% of Footasylum's footwear customers) and a few (6% JD Sports; 15% Footasylum) had looked at other retailer websites.²²⁸ In total, 25% of JD Sports' in-store customers and 54% of Footasylum's in-store customers had visited either the stores or websites belonging to other retailers prior to making their purchase. Of those customers who had looked elsewhere, this was most commonly at the other Party.²²⁹

²²³ DJS Research, *Exit survey retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁴ DJS Research, *Survey of online retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁵ DJS Research, *Exit survey retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁶ DJS Research, *Exit survey retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁷ DJS Research, *Survey of online retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁸ CMA analysis of DJS surveys. See: DJS Research, *Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020 and DJS Research, *Survey of online retail customers for a merger inquiry: JD Sports and Footasylum*, January 2020.

²²⁹ Of the Footasylum customers that had looked elsewhere 74% of those that had looked at other websites had looked at JD Sports and 79% of those that had looked at other physical stores had looked at JD Sports. Of the JD Sports customers that had looked elsewhere 40% of those that had looked at other websites had looked at Footasylum and 39% of those that had looked at other physical stores had looked at Footasylum.

- 8.125 Overall, the Parties' customers gave a range of price and non-price elements of the Parties' offering as the main reason why they shop with the Parties. This is consistent with consumers valuing elements of QRS as well as price.
- 8.126 Around a quarter of JD Sports' in-store footwear customers and half of Footasylum's in-store footwear customers had looked at the offering of other retailers before making their purchase decision and most commonly this comparison was made with the other Party.

Survey results for footwear customer diversion behaviour²³⁰

- 8.127 Our store exit survey asked customers what they would do if all the stores of the Party that they had shopped at were closed. Similarly, our online survey asked customers what they would have done if the Party they had shopped at had stopped selling online.²³¹
- 8.128 The responses to these questions gave an indication of which other retailers customers viewed as alternatives to the Parties. Nationally representative diversion ratios to retailers receiving more than 2% of total diversion (across both channels) are shown in Table 8.5.²³²

²³⁰ Estimates of diversion reported in this section have been weighted to make them nationally representative of the Parties' entire store estate. This is different to the unweighted diversion tables in the DJS exit survey report (see: [DJS Research, Exit survey retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#)).

²³¹ Those customers whose first choice would have been to divert to JD Sports' own online channel, were asked for their next best alternative after this and are instead reported under this next best alternative (this is what we refer to as excluding own-party diversion).

²³² We note that although our store exit survey was designed to provide national estimates of diversion, we have also examined some store level results. We looked at whether there was any apparent material difference in diversion between the Parties depending on the presence of other specific retailers. We found that diversion between the Parties in overlap areas where both Nike and adidas were present broadly exhibited the same pattern as between other stores where only one or neither of them were present. Further, we assessed whether diversion was different in overlap areas where Sports Direct had an elevated store (Thurrock, Denton, Dudley and Leicester). Again, we found that the levels of diversion between the Parties in these areas appeared to be broadly in-line with at other stores.

Table 8.5: Footwear diversion ratios for JD Sports' customers (with no spend-weighting, excluding own-party diversion)

	%					
Retailer	JD Sports' customers					
	In-store customers			Online customers		
	In-store to any channel	In-store to in-store	In-store to online	Online to any channel	Online to online	Online to in-store
Footasylum	21	17	4	16	10	6
Foot Locker	16	12	4	13	7	7
Sports Direct	10	9	1	9	6	3
Nike	7	4	3	18	12	6
adidas	6	4	2	8	6	2
Schuh	6	5	1			
DW Sports	4	3	1			
Amazon				6	6	
ASOS				6	6	
M and M				2	2	
Other third party	16	9	7	12	7	5
Not shop	14			9		

Source: CMA calculations based on DJS surveys.

Note: The tables show diversion ratios from JD Sports to other retailers from the store exit survey and the online survey. The tables only include parties for which the total level of diversion from a given channel exceeds 2%. The 'Other third party' or 'Not shop' category includes a long tail of retailers with lower diversion ratios (for the column in question) including, as applicable, retailers such as: TK Maxx, Next, Debenhams, House of Fraser, and River Island. If a retailer is included as a row in the table but a cell is empty this means that the diversion ratio was less than 2% for the column in question.

The store exit survey, in particular, was designed primarily to estimate diversion between the two Parties; as such the level of sampling error is larger for third parties. The implication of this is that while the estimates for third parties are unbiased, the margin of error is larger.

8.129 JD Sports' in-store customers are most likely to divert to Footasylum to make their footwear purchase. Other than Footasylum, Foot Locker and Sports Direct are the next most commonly given diversion alternatives. Other retailers with diversion above 2% are Nike, adidas, Schuh and DW Sports; 16% of customers would have gone to one of a number of other retailers and 14% would not have shopped at all. While the majority of diversion is to in-store, 23% would have diverted online. Diversion from in-store to online shows a similar pattern in terms of the retailers listed and the relative size of diversion to these retailers as for in-store to in-store diversion.

8.130 JD Sports' online customers are most likely to divert to Nike (18%). Other than Nike, Footasylum (16%) and Foot Locker (13%) are the most popular destinations. Other retailers with diversion above 2% are: Sports Direct; adidas; Amazon; ASOS; and M and M. 12% of customers would have gone to a number of other retailers and 9% would not have shopped at all. While the majority of diversion is online, 29% would have diverted in-store. Diversion from online to in-store shows a similar pattern in terms of the retailers listed and the relative size of diversion to these retailers as for online to online diversion, the main difference being that those retailers that do not have an in-store presence are not included.

8.131 Table 8.6 shows the diversion ratios from Footasylum to other retailers for its footwear customers.

Table 8.6: Footwear diversion ratios for Footasylum’s customers (with no spend-weighting, excluding own-party diversion)

	%					
	<i>Footasylum’s customers</i>					
	<i>In-store customers</i>			<i>Online customers</i>		
	<i>In-store to any channel</i>	<i>In-store to in-store</i>	<i>In-store to online</i>	<i>Online to any channel</i>	<i>Online to online</i>	<i>Online to in-store</i>
JD Sports	68	57	11	46	31	15
Foot Locker	7	4	2	9	5	4
Schuh	3	3		7	5	2
Nike	2	1	1	9	5	4
Sports Direct	2	2				
ASOS				6	6	
Office				4	3	1
adidas				3	2	1
Amazon				2	2	
Other third party	6	4	2	6	5	1
Not shop	12			7		

Source: CMA calculations based on DJS surveys.

Note: The tables show diversion ratios from Footasylum to other retailers from the store exit survey and the online survey. As mentioned in paragraph 6.26, we gave the results of the online survey limited evidential weight. The tables only include parties for which the level of diversion exceeds 2%.

The ‘Other third party’ or ‘Not shop’ category includes a long tail of retailers with lower diversion ratios (for the column in question) including, as applicable, retailers such as: TK Maxx, Next, Debenhams, House of Fraser, and River Island.

If a retailer is included as a row in the table but a cell is empty this means that the diversion ratio was less than 2% for the column in question.

The in-store survey, in particular, was designed primarily to estimate diversion between the two Parties; as such the level of sampling error is larger for third parties. The implication of this is that while the estimates for third parties are unbiased, the margin of error is larger.

8.132 Footasylum’s in-store customers are by far most likely to divert to JD Sports to make their footwear purchases. Other than JD Sports, Foot Locker, Schuh, Nike and Sports Direct have diversion greater than 2%. 6% of customers would have gone to one of a number of other retailers and 12% would not have shopped at all. While the majority of diversion is to in-store, 16% would have diverted online. A similar pattern in terms of the retailers listed and the relative size of their diversion ratios emerges when looking at in-store to in-store diversion and in-store to online diversion.

8.133 Footasylum’s online customers are by far most likely to divert to JD Sports. Other than JD Sports; Foot Locker, Schuh, Nike, ASOS, Office, adidas and Amazon had diversion greater than 2%; 6% of customers would have gone to one of a number of other retailers and 7% would not have shopped at all. While the majority of diversion remains online, 28% would have diverted in-store. Diversion from online to in-store shows a similar pattern in terms of the retailers listed and the relative magnitude of their diversion ratios as for online to online diversion, the main difference being that those retailers that do not have an in-store presence are not included.

Provisional view on footwear customer diversion

- 8.134 In both the store exit survey and the online survey, substantially more Footasylum customers would divert to JD Sports than any other retailer. This shows that Footasylum's footwear customers view JD Sports as their closest substitute.
- 8.135 A sizeable proportion of JD Sports' in-store footwear customers state that their next best alternative is Footasylum. For JD Sports' online footwear customers, Nike is seen as the next best alternative with Footasylum and Foot Locker also seen as close substitutes. This shows that JD Sports' footwear customers view Footasylum as one of a small number of close substitutes.
- 8.136 Diversion to JD Sports for in-store Footasylum footwear customers is substantially higher (61 percentage points) than the next best alternative (Foot Locker), whereas diversion to Footasylum for in-store JD Sports footwear customers is much closer (five percentage points) to the next best alternative (Foot Locker). A similar pattern emerges from the results of the online survey.
- 8.137 This evidence shows that their customers view the Parties as the closest substitutes to each other in-store and are close substitutes online. Therefore, the Parties exert a strong constraint on each other in-store and online, and the constraint that JD Sports imposes on Footasylum is larger than vice versa.

GUPPIs

- 8.138 As explained in chapter 6, the GUPPI is a commonly used metric designed to indicate the upward pricing incentive for merging parties post-merger.²³³ The rationale underpinning the GUPPI is that it is less costly for either of the merging parties to worsen its offering post-merger as it will recoup the profit on recaptured sales from those customers that purchase products from the other merging party. GUPPIs are calculated by combining diversion ratios and profit margin information (see Appendix F for more detail). The CMA has used GUPPIs in the assessment of a number of merger inquiries.²³⁴
- 8.139 GUPPIs provide insight on the incentives that the parties have to increase prices or degrade their offering post-Merger. For example in this case, if Footasylum increased its prices post-Merger, it is reasonable to consider that a proportion of Footasylum's customers (price marginal customers) would switch to purchase the same or comparable product(s) at an alternative

²³³ The same incentive applies to deterioration of QRS as to increasing prices.

²³⁴ Examples of where GUPPIs were used include: [Ladbroke's/Coral merger inquiry](#) (2016), [Cineworld/City Screen merger inquiry](#) (2013) and [Sainsbury's/Asda merger inquiry](#) (2019).

retailer or to forego the purchase altogether. Of these customers, some would complete their purchases at a JD Sports store (or on the JD Sports website). Pre-Merger, Footasylum would have lost the margin from the price marginal customers who divert to JD Sports. However, post-Merger these sales would remain within the Merged Entity. This recapture alters the incentives of the Merged Entity when deciding on the various elements of its retail offering and, if the Merged Entity were to degrade PQRS in response to this changed incentive, consumers could be worse off.

8.140 We have used the nationally representative diversion ratios between the Parties to calculate national GUPPIs.²³⁵ These provide an estimate of the incentive for the Parties to increase prices (or worsen their QRS offering) throughout their store estate and/or online offering. We have calculated GUPPIs for the in-store segment on the basis of our store exit survey. For the online segment and the combined (in-store and online) market, our GUPPI estimates rely on the online survey and therefore we did not place full evidential weight on them.

8.141 In practical terms, Footasylum's GUPPI is equal to the product of the diversion ratio from Footasylum to JD Sports, JD Sports' variable profit margin and the price ratio of the Parties. The diversion ratio is the proportion of Footasylum's customers who state that, if they knew that all Footasylum (and other Footasylum fascia) stores had closed and their website was closed down, they would have completed their purchases at JD Sports. The variable profit margin is the difference between incremental sales revenue and the incremental cost of achieving this revenue. If prices are different across the Parties, the GUPPI would also need to be scaled according to the corresponding price ratio. GUPPIs are not dependent on our market definition and are not impacted by any classification by the CMA of different retailers. Instead, the diversion ratios which feed in to the GUPPIs use the views of the Parties' customers on the closeness of different retailers, to estimate incentives post-Merger.

Parties' views

8.142 The Parties made various submissions regarding the use of GUPPIs. The Parties submitted that the GUPPIs were not probative of an ability to worsen PQRS in this case due to the specific market dynamics from both a demand and supply-side. The Parties submitted that:

²³⁵ Both our store exit and online surveys were designed to allow us to calculate nationally representative diversion ratios. These have been used to calculate national GUPPIs.

- (a) the GUPPI measure does not consider the extent to which demand may materially shift as a result of a change in PQRS. Specifically, if consumers were very responsive to changes in PQRS it may lead to no incentive to worsen PQRS;
- (b) similarly, the GUPPI measure does not account for the threat of a supply-side response in the form of reduced allocations (and/or the reduction or withdrawal of discounts) from suppliers (with products being reallocated to the suppliers' DTC channels or to other retailers, whether in the short or longer term; and
- (c) the GUPPI measure does not consider the impact of entry, expansion and repositioning; factors which the Parties submitted were important parameters in the relevant markets.

8.143 The Parties further submitted that the GUPPI estimates in this case, did not in themselves demonstrate a durable incentive to worsen PQRS as they could not take into account either (i) supplier/rival responses reacting directly to worsened PQRS by the Merged Entity; or (ii) supplier/rival and customer dynamics occurring in any event. Thus, whether the Merged Entity had a sustainable incentive to worsen PQRS needed to be assessed in light of all relevant constraints that would operate on any apparent short-term incentive to worsen PQRS as a result of recaptured diversion post-Merger.

Our assessment

8.144 Our GUPPI estimates for footwear are set out in Table 8.7. We have tested the robustness of these GUPPI figures with respect to a range of factors outlined in detail in Appendix F.²³⁶

Table 8.7: GUPPI estimates - footwear (%)

Market segment	%	
	JD Sports *	Footasylum†
In-store	[4-7]	[19-27]
Online	[3-5]	[10-16]
Combined	[4-7]	[15-22]

Source: CMA calculations based on DJS surveys and CMA variable margin estimates. The ranges presented represents the CMA's ranging of the margin for the purposes of publication.

* These GUPPIs are calculated on the basis of diversion from JD Sports to Footasylum and Footasylum's variable margins.

† These GUPPIs are calculated on the basis of diversion from Footasylum to JD Sports and JD Sports' variable margins.

Note: Combined estimates calculated on the basis of weighted in-store and online diversion (based on 2018 proportions of the Parties' in-store and online revenues) and the relevant margins.

²³⁶ If we focused on price or range marginal consumers, estimated diversion ratios allowing consumers to select other fasciae belonging to the Parties, using spend-weighted diversion ratios or the Parties' submitted variable margins, the impact on the estimated GUPPI would not be sufficient to change our overall conclusion.

8.145 The GUPPI figures are high, particularly for Footasylum but also for JD Sports.²³⁷ In the in-store segment of the market, we have estimated GUPPIs of [19-27%] for Footasylum and [4-7%] for JD Sports. We did not place full evidential weight on the online GUPPIs or the combined GUPPIs as they have both been derived using the online survey results, but note that, although lower than the GUPPIs in-store, they still indicate a strong incentive to increase prices (or worsen other aspects of QRS) for both JD Sports and Footasylum. The asymmetry of the GUPPIs between Footasylum and JD Sports is consistent with other evidence we have reviewed, including the Parties' internal documents.

8.146 As outlined above, the Parties made a number of submissions on the use of GUPPIs, which we have taken into account as follows:

- (a) regarding the submission that the GUPPI does not consider that demand may shift as a result of a change in PQRS, we recognise that the relationship between the GUPPI and any increase in price or deterioration of QRS as a result of the Merger is dependent on the rate of cost pass-through ie the rate at which a business increases its prices or worsens QRS in response to a change in its costs. The higher the level of cost pass-through, the more significant the worsening of PQRS for a given GUPPI. We do not have any evidence on the rate of cost pass-through and consider that it is not necessary to make any assumptions about the nature of demand in the market that would be required to undertake alternative approaches to assessing post-Merger incentives. However, given the magnitude of the GUPPIs, particularly for Footasylum, under any standard assumptions about the rate of cost pass-through or the nature of demand the impact of the Merger would be significant;
- (b) regarding the submission that the GUPPIs did not account for the threat of reduced allocation and/or discounts from suppliers, we have considered in earlier sections the role of suppliers and how the Parties compete (paragraphs 8.23 - 8.48, and 8.53 - 8.63). We have found that there is competition above a minimum floor set by suppliers, and it is this competition that could be reduced as indicated by the incentives implied by the GUPPI estimates;
- (c) regarding the submission that GUPPI estimates do not consider the impact of entry, expansion and repositioning, we agree that these are not

²³⁷ We have not set a specific GUPPI threshold above which an SLC would arise in our national level assessment of this Merger. A threshold is sometimes necessary in the context of using a decision rule to identify local SLCs, where there are too many local areas to assess individually, but is not necessary in this case given our national assessment.

captured within the GUPPI. As such we have considered the impact on competition from market developments in paragraphs 8.210 - 8.271 and potential entry and expansion in chapter 11.

Provisional view on GUPPIs

8.147 As noted in paragraph 8.137, the diversion ratios from the store exit survey and online survey show that the Parties' customers view the Parties as the closest substitutes to each other in-store and as close substitutes online. Therefore, the Parties exert a strong constraint on each other in-store and online, and the constraint that JD Sports imposes on Footasylum is larger than vice versa. When combined with estimates of the Parties' variable margins, this results in high in-store GUPPIs, particularly for Footasylum

8.148 In the in-store segment of the market we have 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 presented elsewhere in this chapter, for example the Parties' own internal documents. Although the online and combined GUPPIs are lower than the in-store GUPPIs, they still indicate a strong incentive to deteriorate PQRS through raising prices or worsening elements of QRS.

Entry-exit analysis

8.149 One way to assess the strength of the competitive constraint from a given retailer on the Parties is to assess the impact on the Parties of that retailer's stores opening or closing near to one of its stores — an 'entry-exit analysis'.

8.150 The entry-exit analysis complements other evidence sources on the extent to which different retailers constrain each other, by providing information on consumers' *actual* behaviour rather than their *stated* behaviour. We note that this analysis is focused on store-level data and, as such, is relevant to the in-store segment of the relevant markets.

8.151 The next sub-section sets out the Parties' views on our entry-exit analysis. Further detail on our results, methodology and responses to the Parties' submissions is set out in Appendix C, as well as below.

Parties' views

8.152 The Parties stated that the CMA's analysis was retrospective and did not reflect:

- (a) the prospective competitive landscape;
- (b) the weakened position of Footasylum in the counterfactual; and
- (c) the impact of Sports Direct's elevation strategy.

8.153 The Parties submitted that the results of the CMA's entry-exit analysis showed that a number of other retailers impacted JD Sports' in-store revenue to a [redacted] as estimated for Footasylum.²³⁸ In footwear, the Parties submitted that this included retailers such as [redacted] in certain specifications of the model.

8.154 The Parties also noted that some coefficients in the estimated entry-exit models were positive and statistically significant or were otherwise counterintuitive. The Parties submitted that these results suggested a degree of misspecification in the models and limited the weight that the CMA should place on the results.

8.155 We have considered these points below and in detail in Appendix C.

Our assessment

8.156 We have examined the impact of store openings and closures by different retailers on JD Sports, looking at the impact on their store revenue alongside a number of other aspects of JD Sports' offer.

8.157 The impact on revenue provides an indication of the extent to which that retailer competes with JD Sports. We would expect the opening of a new store by a retailer that does not compete closely with JD Sports (for example Boots) to have no effect on the revenue of a JD Sports store. Conversely, we would expect the opening of a store by a retailer that is a close competitor to have a negative (and statistically significant) effect on the revenue of a JD Sports store.

8.158 We acknowledge that the analysis is retrospective as submitted by the Parties, but consider this has the benefit of allowing us to examine actual consumer behaviour. We recognise that it may fail to capture changes in the market, but we consider these in our analysis of market developments, later in this chapter.

²³⁸ JD Sports has also previously conducted its own form of entry impact analysis, discussed at later in this chapter.

- 8.159 One caveat to our entry-exit analysis is that there is potential for upward bias in the estimates (discussed in full in Appendix C).²³⁹ The robustness of the results is also sensitive to the number of store openings and closures in conjunction with the number of JD Sports stores affected by such openings and closures.²⁴⁰ While there is no cut-off for a sufficient number of affected stores, we acknowledge that the robustness of our conclusions for the impact of entry by retailers decreases when the number of affected JD Sports stores decreases.²⁴¹ We consider that entry-exit analysis remains informative of the relative constraint exerted by different retailers, particularly when the analysis is considered in the context of other evidence.
- 8.160 It was only possible to carry out a robust entry-exit analysis for JD Sports as Footasylum has significantly fewer stores than JD Sports and the number of observed entry and exit events impacting Footasylum is therefore smaller. As a result, there was not sufficient data for statistically robust estimation.
- 8.161 The weekly data that we have used for the analysis was supplied by JD Sports and covered the period 2014 to 2019.²⁴² The data was aggregated to the monthly level. The estimated effects relate to an average across all JD Sports stores and the entire period under consideration. A full discussion of the econometric methodology is provided in Appendix C.
- 8.162 The impact of the opening of a new store may be less if the retailer opening the store already has many stores in the local market. An analysis of all entry and exit events by retailers may underestimate the closeness of competition between the two retailers. We have therefore analysed separately two different forms of entry (and equivalent forms of exit).²⁴³ First, we have analysed retailers' opening of stores in areas where JD Sports is present, regardless of whether or not the entering retailer has an existing store(s) in the area 'store entry'.²⁴⁴ Second, we have analysed retailer entry into areas

²³⁹ The Parties submitted that the presence of positive and significant coefficient estimates in the entry-exit analysis was indicative of model misspecification. This submission is related to the issue of upward bias. We believe that the positive and statistically significant results mentioned in the Parties' submission are the result of upward bias. We accept that upward bias could cause some retailers that are a competitive constraint to have no negative and statistically significant impact in the regression estimates. Given this observation, we only place evidential weight on negative and statistically significant results. Results for retailers that are not negative and statistically significant are not treated as evidence that the retailer is not a competitive constraint. Nevertheless, we consider entry-exit analysis remains informative of the relative constraint exerted by different retailers, particularly when the analysis is considered in the context of other evidence.

²⁴⁰ As an example, there were [X] JD Sports stores affected by retailer-level entry or exit by Zara, Office, Schuh, Outfit, Primark and Offspring.

²⁴¹ Appendix C shows the number of affected JD Sports stores and the number of store openings and closures.

²⁴² Data on Footasylum store locations was provided by Footasylum. Data on other retailer store locations was provided by JD Sports.

²⁴³ We have examined a change in the number of a retailer's stores in the local area by one meaning that these estimates are derived from both entries and exits.

²⁴⁴ Store entry uses any change in the number of stores belonging to a given retailer for estimation.

where JD Sports is present, but the entering retailer does not have an existing store (retailer entry).²⁴⁵

8.163 To test the robustness of our results we have used two different econometric methods. The first more simple method accounted for store-specific and time-specific factors which if not accounted for, could lead to biased estimates. The second specification additionally accounted for region-specific factors that vary over time.²⁴⁶ A more detailed explanation of the econometric approach is provided in Appendix C.

Results – impact on revenue

8.164 We have shown below our statistically significant and negative results only, noting that for some retailers the results were significant for some measures of entry or specifications but not others.

8.165 Store entry²⁴⁷ by the following retailers is found to have a statistically significant and negative impact on footwear revenue in the local JD Sports store:²⁴⁸

(a) Footasylum ([§] %);²⁴⁹

(b) Nike ([§] %);²⁵⁰ and

(c) Deichmann ([§] %); this estimate ceased to be statistically significant when region-specific factors that vary over time were accounted for and is therefore given limited weight.

8.166 Retailer entry²⁵¹ by the following retailers is found to have a statistically significant and negative impact on footwear revenue in the local JD Sports store:²⁵²

²⁴⁵ Retailer entry occurs when the number of stores belonging to a given retailer changes from zero to one (or more), while retailer-level exit occurs when the number of stores belonging to a given retailer changes from one (or more) to zero.

²⁴⁶ As an example of why this might be important, suppose that both the number of new store openings by Footasylum and JD Sports' store performance in region A increased due to higher demand in months one to six, if not adjusted for this could lead to the incorrect finding of a positive relationship between Footasylum store openings and JD Sports store performance.

²⁴⁷ Both entry and exit were estimated in the same models. As such, the results show both the impact of entry and exit, with the impact of exit obtained by reversing the sign of the coefficient.

²⁴⁸ The average JD Sports weekly store revenue over the period in question is £[§], of this, £[§] was attributable to footwear and £[§] to apparel.

²⁴⁹ [§].

²⁵⁰ [§].

²⁵¹ Measured by an increase in the number of stores belonging to a given retailer from zero to one (or more).

²⁵² Retailer entry by Skechers was found to have a statistically significant impact on JD Sports store footwear revenue when region-specific factors that vary over time were accounted for.

(a) Footasylum ([REDACTED] %);²⁵³

(b) Foot Locker ([REDACTED] %);²⁵⁴ and

(c) Deichmann ([REDACTED] %);^{255,256}

8.167 The entry-exit results indicate that Footasylum is a competitive constraint on JD Sports when it comes to footwear. Footasylum has a consistently high negative impact on the footwear revenue of JD Sports. Store entry by Nike and Deichmann and retailer entry by Foot Locker and Deichmann was also found to reduce the revenue from footwear at the local JD Sports store.

8.168 Only for Footasylum does both store entry and retailer entry result in a statistically significant and negative fall in the local JD Sports store's footwear revenue; this gives us confidence in the robustness of the results when it comes to the constraint from Footasylum on JD Sports.

8.169 Given the potential for upward bias, any estimates which were not negative and statistically significant have been treated as being indicative of an absence of evidence for the impact of these retailers on the revenue of JD Sports, rather than evidence for the absence of a competitive constraint. As such, the entry-exit analysis indicates that the retailers which exert a competitive constraint on JD Sports include at least Footasylum, Foot Locker, Nike and Deichmann.²⁵⁷ Given the upward bias noted above, it is not possible to rule out that other retailers may also exert a competitive constraint on JD Sports in the same market.

8.170 The finding that retailer entry by Deichmann reduces JD Sports' footwear revenue contrasts with other evidence such as the level of monitoring of Deichmann by JD Sports in internal documents and the survey results where low diversion to Deichmann from JD Sports was observed. The differences between the survey and entry-exit results for Deichmann could be due to the different time periods being considered. The entry-exit analysis is more retrospective than the survey, therefore, if Deichmann were a constraint in the past but is less so now, this would be captured in the entry-exit analysis but

²⁵³ [REDACTED]

²⁵⁴ [REDACTED]

²⁵⁵ [REDACTED]

²⁵⁶ No statistically significant impact was observed for Skechers in the base specification, however, when region-specific factors that vary over time were accounted for, a statistically significant and negative impact of [REDACTED] % was found.

²⁵⁷ We note that in analysis carried out by JD Sports in December 2019, it estimated that recent Foot Locker store openings reduced revenue at the nearest JD Sports store by [REDACTED], while Foot Locker store closures had up to [REDACTED] on the same basis.

not in the survey. The magnitude of the estimated impact of retailer entry by Deichmann is [X] Footasylum.

Results – impact on discounting and store refurbishment

8.171 As well as estimating the impact of entry and exit by other retailers on revenues we have also estimated their impact on the proportion of products sold at full price and the time since the store was last refurbished. We have found the following statistically significant and negative results:

(a) store entry by Footasylum is found to have a statistically significant and negative ([X]) impact on the time since the local JD Sports store was last refurbished.²⁵⁸

8.172 We also found the following statistically significant and negative results, but these estimates ceased to be statistically significant when region-specific factors that vary over time were accounted for and are therefore given limited weight:

(a) retailer entry by Footasylum is found to have a statistically significant and negative ([X]) impact on the proportion of products sold at full price in the local JD Sports store;

(b) store entry by Schuh is found to have a statistically significant and negative ([X]) impact on the proportion of products sold at full price in the local JD Sports store; and

(c) retailer entry by Next is found to have a statistically significant and negative ([X]) impact on the time since the local JD Sports store was last refurbished.

8.173 The estimates for the impact of entry on the proportion of products sold at full price and the number of years since last refurbishment are less precise than those for revenue. The reason for this is that there is less variation in the outcome variables, meaning it is more difficult to identify statistically significant effects.

8.174 The size of the impact on the proportion of products sold at full price was small but there is evidence that store entry by Schuh and retailer entry by Footasylum leads to a reduction in the proportion of products sold at full price. However, these estimates ceased to be statistically significant when region-

²⁵⁸ [X] when region-specific factors that vary over time were accounted for but remaining statistically significant.

specific factors that vary over time were accounted for and are therefore given limited weight.

- 8.175 Store entry by Footasylum has a negative, statistically significant impact on the number of years since the local JD Sports store was last refurbished. This estimate is robust to using a model which accounts for region-specific factors that vary over time. By contrast, retailer entry by Next is found to reduce the time since last refurbishment only when region-specific factors that vary over time are not accounted for and is therefore given limited weight.
- 8.176 Given the potential for upward bias, and the fact that there is less variation in the outcome variable, making it more difficult to identify statistically significant effects, any estimates which are not negative and statistically significant should be treated as being indicative of an absence of evidence for the impact of these retailers on the proportion of products sold at full price and the time since the store was last refurbished of JD Sports, rather than evidence for the absence of a competitive constraint.
- 8.177 As such, the entry-exit analysis indicates that the retailers whose entry/exit is associated with a change in the proportion of products sold at full price and refurbishment offerings of JD Sports include at least Footasylum, and to a lesser extent Schuh and Next, given that these estimates for Schuh and Next are less robust. Only for Footasylum is the evidence unchanged when we account for region-specific factors that vary over time.

Provisional view on entry-exit analysis results

- 8.178 Looking at the entry-exit analysis in the round, Footasylum is the only retailer that has a negative impact on JD Sports in at least one of the analytical approaches across all three variations of entry-exit analysis, ie an effect on revenue, the proportion of products sold at full price and the number of years since last refurbishment. This indicates that Footasylum is a close competitor to JD Sports and exerts a constraint on JD Sports. We also note that entry by Foot Locker, Nike and Deichmann also has an impact on JD Sports' revenue, indicating they impose some constraint.

Overview of current competitive constraints

- 8.179 We have reviewed a wide range of evidence on the nature of retailers' offerings and third parties' rankings of competitive closeness, internal documents, our surveys and our entry-exit analysis, in assessing the current constraints on competition.

Parties' views

- 8.180 JD Sports submitted that there was a broad range of effective competitors, both online and in-store, in the relevant markets, and that the Merged Entity would continue to compete with a significant number of retailers post-Merger.
- 8.181 JD Sports submitted that while each of the Parties relied on the resale of Nike and adidas footwear products, this did not make them 'close competitors' since this did not distinguish them from other UK sports footwear retailers.²⁵⁹ The Parties also submitted that they were 'vertically differentiated' in the sense that suppliers treated JD Sports and Footasylum [X] and [X].²⁶⁰
- 8.182 JD Sports submitted that few consumers were brand indifferent in footwear and that mono-brand retailers competed closely with multi-brand retailers.²⁶¹ It added that Nike and adidas (and other suppliers) were not mere vertical 'wholesalers' of products, but that they were also significant retail competitors underpinned by aggressive strategies to grow their DTC sales.²⁶²
- 8.183 JD Sports submitted that the Parties faced 'fierce competition [...] from a wide range of retailers, including Foot Locker, ASOS, Sports Direct [...], the brands' DTC channels, Office, Schuh, End, Zalando, Next, DW Sport, Amazon and Very'. In aggregate, the constraints from other retailers contributed to severe competitive pressure on the Parties.²⁶³ It told us that the Parties had regard to a range of competitors in their internal documents and that the CMA's survey identified a wide range of competitors.

Third parties' views

- 8.184 We have received submissions from a number of third parties,²⁶⁴ most of whom considered that the Parties competed closely and there were few other close constraints on the Parties both currently and post-Merger.

²⁵⁹ JD Sports, *Initial Phase 2 Submission*, paragraph 7(b).

²⁶⁰ JD Sports, *Initial Phase 2 Submission*, paragraph 4(iii).

²⁶¹ JD Sports, *Initial Phase 2 Submission*, paragraph 66.

²⁶² JD Sports, *Initial Phase 2 Submission*, paragraph 9.

²⁶³ JD Sports, *Initial Phase 2 Submission*, page 52.

²⁶⁴ We note that JD Sports submitted that 'As in all cases where there are complainants with commercial incentives to frustrate a deal there will be a question of how much weight should be given to their views about the effect of a merger (as opposed to other grievances) and a need to ensure their submissions are supported with evidence.' As in any inquiry, we have given due regard to a range of factors including: the incentives of the party giving that evidence; the extent to which the party had knowledge that was relevant to the statutory questions we are required to answer; and the extent to which the evidence was corroborated by other evidence available to us.

Competition between the Parties

8.185 At phase 1, we asked third party retailers to rank the Parties in terms of their closeness of competition to each other.²⁶⁵ Overall, third parties indicated that the Parties competed closely against each other (see paragraphs 8.92 to 8.93 where we have explored this further).

8.186 Several retailers submitted that the Merger would decrease competition in the market and expressed general concerns about the Merger. These concerns predominantly referenced the Merger as strengthening JD Sports' position in the market. For example, one retailer ([REDACTED]) told us that JD Sports and Footasylum could be considered as competing and that JD Sports was one of the two closest competitors to Footasylum.²⁶⁶ Another ([REDACTED]) submitted that JD Sports and Footasylum competed quite hard for their target market, ie consumers aged 13 to 21/22.

8.187 Several retailers submitted that: the Merger would decrease competition in the sector; increase the leverage that the Merged Entity would have over suppliers and enable the Merged Entity to have better access to branded products, sub-brands, franchises and specific footwear products that were most desired and in demand by consumers, but which would be unavailable to other retailers.

Constraints from other retailers

8.188 We have asked third party retailers to rank other retailers in terms of their closeness of competition in footwear to each of the Parties. Based on these rankings, Foot Locker was frequently mentioned as a close competitor,²⁶⁷ while Sports Direct, ASOS, Office and Schuh, were ranked as medium constraints (see paragraph 8.93). One retailer submitted that as a result of the Merger 'you will basically have a duopoly' in the sports-inspired casual footwear market, comprising the Merged Entity and Foot Locker.

8.189 Three retailers²⁶⁸ submitted that they regarded JD Sports as a 'powerful' competitor, with one of these retailers commenting that JD Sports affected 'the way in which we compete largely because of the ability to control the supply of branded footwear in the market'. A fourth retailer ([REDACTED]) identified

²⁶⁵ Closeness in this context was measured on a one (not close at all) to 10 (very close) scale. See: [CMA, Phase 1 decision, paragraph 253](#).

²⁶⁶ [Summary of hearing with Company B, 12 November 2019, paragraph 8](#).

²⁶⁷ CMA analysis of third party questionnaires during phase 1.

²⁶⁸ [Summaries of hearings with Companies A, D and F](#).

both Parties as its closest competitors in footwear, which would become stronger in the market post-Merger.

8.190 Retailers submitted a number of similar, additional points, for example:

- (a) [X]²⁶⁹ [X] and [X] told us that the Merger would leave only one real competitor – Foot Locker – to the Merged Entity in the market;
- (b) [X] also submitted that any competitive constraints on the Merged Entity by [X] (or any other competitor in the market, aside from [X]) were (and would continue to be) limited and that other retailers did not receive sufficient offerings from suppliers to enable them to act as a meaningful constraint on the Parties;
- (c) [X] told us that it considered itself to be a ‘close competitor’ to both JD Sports and Footasylum; and
- (d) [X] submitted that ‘when you think about [X]. It recognised that other retailers with a ‘footwear presence’ - such as River Island and Topshop - also competed in the market to an extent.

8.191 A number of retailers considered that there was a broad competitor set within the sports-inspired casual footwear market,²⁷⁰ and one retailer noted that it ‘considered other retailers in the market [as] being capable of drawing customers away from it’.²⁷¹

Our assessment

8.192 For JD Sports, while it is a larger retailer than Footasylum, we have found its offering to be very similar to Footasylum, internal documents demonstrate that JD Sports sees Footasylum as a close competitor, its in-store customers are most likely to divert to Footasylum and among its online customers, Footasylum was the second closest alternative in terms of diversion, the opening of Footasylum stores affects nearby JD Sports stores’ footwear revenues and third parties ranked Footasylum highly as a close competitor.

8.193 For Footasylum, although it is a smaller retailer, we have found its offering to be very similar to JD Sports, internal documents demonstrate that Footasylum sees JD Sports as its closest competitor, its customers are by far most likely

²⁶⁹ [Company A, Summary of response to the CMA’s Issues Statement, November 2019, paragraph 5.](#)

²⁷⁰ [Summary of hearing with Companies B, D and G](#)

²⁷¹ [Summary of hearing with Company D, paragraph 5.](#)

to divert to JD Sports and third parties ranked JD Sports highly as a close competitor.

- 8.194 Taken together we have found that the evidence strongly demonstrates that the Parties are close competitors to each other and JD Sports provides a stronger constraint on Footasylum than vice versa. Based on the GUPPIs we have calculated, these show a strong incentive for the Merged Entity to degrade PQRS post-Merger.
- 8.195 We have considered the current constraints from other retailers on both of the Parties. Overall, the evidence shows that there are few other strong competitors to the Parties, with Foot Locker providing a strong constraint. Nike (particularly online) exerts some constraint on the Parties, but less than each does on the other.
- 8.196 Foot Locker is closely monitored by both Parties, its footwear offering is similar, our surveys show it is generally the next best alternative after the Parties themselves and the entry-exit analysis indicates that entry or exit of Foot Locker stores impacts JD Sports' store level footwear revenue, indicating it is particularly strong in-store. On the basis of this evidence we consider that Foot Locker is a close competitor and therefore imposes a strong constraint on the Parties, although on its own we do not consider that it would sufficiently constrain the Parties so as to prevent an SLC from arising.
- 8.197 Similarly, Nike's DTC offering is seen to have an impact on the Parties. We found that it is monitored by both of the Parties in their internal documents. Our entry-exit analysis indicates that the opening of Nike stores has an impact on JD Sports' footwear revenues. However, our surveys show that diversion to Nike in-store was relatively low. Further, our store exit survey shows that the presence of a Nike store nearby only has a relatively small impact on the number of customers who would divert to the Parties' stores. This is consistent with the fact that the majority of its physical stores are factory outlets, [§]. The online survey suggests that Nike may be a closer competitor to the Parties for online customers than for in-store customers. On this basis we have found that Nike (particularly online) exerts some constraint on the Parties, but less than each does on the other.
- 8.198 While numerous other retailers offer sports-inspired casual footwear, taken in the round, the same evidence indicates that their constraint on the Parties is only moderate at best.
- 8.199 We have found that adidas's DTC offering is a weaker constraint than Nike. It is monitored by both Parties in their internal documents. However, our store exit survey shows that while it imposes some constraint on JD Sports, it has a

much weaker constraint on Footasylum and we did not find evidence of a constraint from adidas in our entry/exit analysis.

- 8.200 There are a number of other multi-brand competitors such as ASOS (online-only) which the Parties monitor and Schuh and Office (which offer only footwear, including non sports-inspired products), which the Parties monitor to a lesser extent. Both ASOS and Office are strongly focussed on female consumers (unlike the Parties). Our surveys found that some customers would divert to their stores or website but to a much lesser degree than to either of the Parties. Therefore, the evidence shows overall that although these competitors impose some competitive constraint, this is relatively limited.
- 8.201 The evidence shows that Sports Direct exerts some constraint on the Parties in footwear. The Parties' internal documents demonstrate a low degree of monitoring of Sports Direct. We consider that Sports Direct's offering is different to the Parties and more towards the sports and value end of the product spectrum. Therefore, although Sports Direct does impose some constraint, particularly for JD Sports according to our surveys,²⁷² this is substantially less than that imposed by the Parties on each other.
- 8.202 We have analysed other online-only retailers (eg Zalando and Amazon). 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.²⁷³ However, the evidence overall also suggests that none is currently a close competitor to the Parties. This lack of direct competition is supported by our store exit survey, where Zalando and Amazon had levels of diversion below 2%. Amazon had higher levels of diversion in our online survey, albeit still less than the Parties and other retailers.
- 8.203 Based on our assessment, we provisionally find 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 will not be sufficient to prevent an SLC.
- 8.204 We recognise that this is a dynamic market and therefore in addition to evidence illustrating current constraints on the Parties, it is important to consider the impact of future market developments on the competitive constraints on the Merged Entity which we have considered below.

²⁷² Diversion from JD Sports to Sports Direct was 10% for in-store customers and 9% for online customers. See Table 8.5.

²⁷³ For example, JD Sports provided a number of strategy documents which showed that [REDACTED].

Market developments

8.205 Our Guidance states that changes to market conditions in the foreseeable future will often be assessed as part of our competitive assessment.²⁷⁴ We have assessed whether there are any changes underway or likely to happen in the foreseeable future (ie the next few years) that may materially change the nature of the existing constraints on the Parties. We have focused our assessment on retailers already present in the market and considered any repositioning or significant expansion. We have separately assessed new market entry, including entry from adjacent markets, when we have considered countervailing factors (see chapter 11).

Parties' views

8.206 The Parties submitted that the sector in which they operated 'is subject to substantial disruptive expansion and repositioning by rivals', which 'is not hypothetical (it is happening), [...] is not binary (it is happening progressively) and [...] is not resting on one entrant (there are many)'. The Parties cited the following factors as evidence that 'many' rivals were disruptively expanding and repositioning themselves:

- (a) development of the DTC channel and upstream control by Nike and adidas;
- (b) the repositioning of Sports Direct through its 'elevation strategy';
- (c) the expansion of Foot Locker's presence in the UK; and
- (d) the Parties' understanding that [redacted].

8.207 The Parties submitted that they also faced the threat of 'potential brand-sponsored entry' and that suppliers 'can and do sponsor entry into the market when the incumbent retailers are under-performing', in particular where the retail market in question was 'not well served by existing retailers', [redacted]. We have considered potential supplier-sponsored entry as part of our assessment of countervailing factors in chapter 11.

8.208 The Parties submitted that this expansion and repositioning of other retailers would be 'large relative to the scale of Footasylum, meaning that the constraint from Footasylum on JD Sports would be replaced, several times over, by new constraints'. The Parties summarised their submissions on

²⁷⁴ [CMA Guidance](#), paragraph 4.3.2.

expansion and repositioning by stating: ‘the relevance of entry, expansion and repositioning is that it (or the prospect of it) defeats any incentive to worsen PQRS today. Why go backwards when the rest of the market is aggressively moving forwards?’.²⁷⁵

Third parties’ views

8.209 Third parties who commented on market developments highlighted suppliers’ role in the market and particularly their DTC offer which they submitted was changing, for example:

- (a) [X] submitted that ‘As brands are looking to consolidate within the market, and improve their own DTC (direct to consumer) channel, they are likely to focus on larger scale operations and sacrifice smaller chains and independents’. [X] also noted that the ‘small chains and independents are pushed out by the large chains’, with these retailers losing market share every year;
- (b) [X] submitted that ‘Nike was reported to have recently altered its distribution strategy to focus more on growing its DTC channels, comprising its own website and network of own-branded stores’. It went on to state that ‘The consequences of the implementation of these strategies is that UK consumers would experience significantly reduced levels of competition in the sneaker footwear retailing market in the coming years’; and
- (c) [X] submitted that ‘digital DTC business has increased substantially over recent years and continues to have a marked effect on our ability to compete to attract consumers into our doors and onto our website. Our expectation is to see this trend continue’.

Our assessment

8.210 In this section, we have focused our assessment on changes in retailers who are already present in the market repositioning or expanding their offer. In particular, we consider Frasers Group, DTC growth and multi-brand retailers’ growth including Foot Locker.

²⁷⁵ We note that elsewhere in the same submission, the Parties stated that they had no incentive to worsen PQRS, setting out that: ‘Ultimately, the threat of adverse supplier reactions to worsening PQRS and the threat of entry, expansion and repositioning eliminates any material incentive to worsen PQRS even in circumstances where the GUPPI model or diversion ratios in isolation suggest an apparently high incentive to worsen PQRS.’

Changes in retailers' positioning

8.211 Since sports-inspired casual footwear is trend driven, retailers of such products may reposition themselves in terms of what they stock, the fascia under which they trade, the branding that they use, the branding of a given fascia, marketing and the consumers which they target. If a given retailer were to change some or all of these elements of its offering, this could change the extent of the constraint that it exerts on the Parties in the foreseeable future. Such a change would not be captured by the retrospective nature of some of the evidence we have considered, such as our entry-exit analysis and the surveys. However, some internal documents may capture the Parties' views about the market developments, and we have referred to these in our assessment.

Frasers Group

8.212 Frasers Group is a large retailer of sporting goods, footwear and apparel, and has publicly outlined its intentions to elevate and change the retail proposition of some of its fasciae (including Sports Direct) in the coming years.^{276,277} Its elevation strategy is to improve the quality of its stores and digital offer to elevate the perception of the Sports Direct fascia and the wider Frasers Group. In Frasers Group's half-year results, elevation was listed as a strategic priority.²⁷⁸

8.213 We have considered whether this elevation strategy would mean that the Sports Direct fascia of Frasers Group would become a closer competitor to the Parties in the foreseeable future than it has been to date.

8.214 The renaming of Sports Direct International to Frasers Group is a part of its elevation strategy. As part of this, the Sports Direct fascia has also changed its branding in some settings, for example changing the logo that it uses and the visual merchandising which supports its product offerings.²⁷⁹

8.215 Another part of its elevation strategy is to convert, or open new stores, as 'elevated stores'.²⁸⁰ As well as being larger than traditional Sports Direct stores, elevated stores typically include multiple fasciae. A number of stores

²⁷⁶ [Frasers Group, Interim Results for the 26 weeks to 27 October 2019](#).

²⁷⁷ Frasers Group possesses a number of fasciae within the retail of clothing and footwear. Within the Sports Direct segment of sports retail sits the Sports Direct and USC fasciae. Frasers Group also has fascia that fall into the premium lifestyle segment, namely, Flannels, Cruise and van Mildert.

²⁷⁸ [Frasers Group, Interim Results for the 26 weeks to 27 October 2019](#).

²⁷⁹ The previous logo used red and blue text on a white background with the text 'Sports Direct', the new logo uses the text 'SD' in white set inside a black circle. JD Sports submitted that the [REDACTED].

²⁸⁰ Note that 'opening an elevated store' could be either opening an entirely new store or upgrading an existing store.

include Sports Direct together with a USC fascia while other stores are also adjacent to a Flannels store.

- *The scale of elevation*

8.216 In its half-year results presentation on 8 December 2016, Frasers Group (Sports Direct International at the time) stated that its programme of store elevation would see it invest around £1 billion in property assets over five to 10 years from 2017, of which approximately £300 million would be spent per annum for the first two to four years from 2017.²⁸¹

8.217 To date, Frasers Group has opened 16 elevated Sports Direct fascia stores in the UK, the first of which was opened in February 2018.^{282,283} [REDACTED].

8.218 [REDACTED], Sports Direct noted that in the 2018/19 financial year it opened [REDACTED] stores and closed [REDACTED]. [REDACTED], store closures accounted for approximately [REDACTED] square feet of retail space while store openings accounted for approximately [REDACTED] square feet. This shows that as well as being elevated in terms of fixtures and fittings, new elevated stores are significantly larger. The 16 existing elevated stores are also described by Sports Direct as ‘best-in-class’ and built to the highest specifications and quality.

8.219 Over a longer time horizon, [REDACTED]. The increased number of elevated stores that currently exist is set against a backdrop of a net reduction in sports stores by nine as documented in the Frasers Group half-year results.²⁸⁴

8.220 As well as elevating its in-store proposition, Frasers Group has upgraded the digital offering of its core fasciae. In its 2019 Annual Report, Frasers Group stated that the websites for each of its core fasciae in the UK, which include Sports Direct, USC and Flannels, had undergone ‘significant enhancements in order to facilitate optimum appeal to consumers’. It added that its ‘product offering across these core fascias, both in-store and online, aims to create a compelling shopping experience in key categories that include, among others, Football, Women’s, Kids, Running, Cycling, Lifestyle, Fashion and Luxury’.²⁸⁵

8.221 [REDACTED].

²⁸¹ See: [Frasers Group, Annual Report 2018, page 7](#) and [Frasers Group, Annual Report 2017, page 44](#).

²⁸² [REDACTED]

²⁸³ [REDACTED]

²⁸⁴ [Sports Direct, Preliminary results, 26 July 2019, page 22](#).

²⁸⁵ [Frasers Group, Sports Direct International plc Annual Report and Accounts 2019, 26 July 2019, page 9](#).

- *Fraser's Group's views on its elevation*

8.222 [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].

8.223 [REDACTED]

8.224 However, we note that while elevation [REDACTED], the Sports Direct fascia primarily stocks sporting products. 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. We consider that for its elevation to materially change the competitive constraint that Sports Direct exerts on the Parties (as set out in paragraph 8.201) in the foreseeable future, its elevation would need to lead to access to products similar to those stocked by the Parties in the sports-inspired casual footwear market, as well as a change in how consumers perceive the Sports Direct offer.

- *Fraser's Groups' access to products for elevated stores*

8.225 A key element of competition in this market and adjacent markets such as sports performance is access to the most desirable products. [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) Fraser Group's half-year report stated that even though Sports Direct believes that it is delivering the elevation strategy in-line with the benchmarks set by suppliers, it remains 'sceptical' of the elevation; and
- (d) [REDACTED].

8.226 However [REDACTED]:

- (a) [REDACTED];
- (b) [REDACTED];²⁸⁶

²⁸⁶ [REDACTED].

(c) [REDACTED];

(d) [REDACTED]; and

(e) [REDACTED].²⁸⁷

8.227 [REDACTED].

8.228 [REDACTED]:

(a) [REDACTED]; and

(b) [REDACTED].

The Parties' consideration of Frasers Group's elevation strategy

8.229 To inform our assessment, we have also asked JD Sports and Footasylum to provide any internal documents, including board papers, strategy documents or email correspondence between their personnel over the last three years that refer to, or discuss:^{288,289}

(a) response to new market entry or expansion events in the relevant markets;

(b) the perceived level of threat of potential entry and/or expansion; and

(c) new entry from an international retailer in the relevant markets.

8.230 Following a manual review of documents sent between its senior management team,²⁹⁰ Footasylum submitted 19 documents in response to our request. [REDACTED].

8.231 Footasylum provided three store trade packs where competitor activity is discussed [REDACTED]. These trade packs were produced in June/July 2019, after the Merger and during the course of the CMA's phase 1 Merger inquiry, which therefore may undermine their robustness and the extent to which they can be considered as being produced during the ordinary course of business. Annexes [REDACTED] of these documents note the [REDACTED]. Two of the trade packs note that [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

²⁸⁹ [REDACTED].

²⁹⁰ Specifically, by its Buying Director, its former CEO (Clare Nesbitt) and its current CEO and Chairman (Barry Bown), Footasylum's response also included documents found by a manual review on the part of its Head of Retail and Property Acquisition Manager.

- 8.232 JD Sports submitted [REDACTED]. Of these documents, [REDACTED] were dated prior to 2018. We note that the content and focus of the more recent documents could be influenced by the CMA's Merger investigation, and that the lack of documents prior to 2018 could be due to less elevation activity (or less attention to such activity from JD Sports) by Sports Direct. The elevation strategy was first referenced in Frasers Group's annual reports in the 2016 report, however, the first store [REDACTED] did not open until 2018.
- 8.233 The majority of the submitted documents relate to the routine monitoring of competitor behaviour in terms of [REDACTED]. In the course of this routine monitoring, prior to December 2018, JD Sports [REDACTED]. This [REDACTED] could suggest that JD Sports at that point in time was not monitoring the activity of Sports Direct as closely as other retailers. However, we note that in the most recent emails of this type this appears to have changed and [REDACTED], which is consistent with the notion that JD Sports is increasing the extent to which it monitors Sports Direct.
- 8.234 In an email from 2017, JD Sports discussed its [REDACTED]. Peter Cowgill, Executive Chairman of JD Sports, notes that [REDACTED]. The Group Property Director concludes by stating that '[REDACTED]'.²⁹¹
- 8.235 One of the internal documents is an email exchange between JD Sports staff regarding the opening of an elevated Sports Direct store in [REDACTED]. The emails are dated [REDACTED] which is prior to the Merger and the newly opened elevated Sports Direct store in question is described as a '[REDACTED]'. This suggests that, prior to the Merger, JD Sports was worried about the potential growing threat from Sports Direct due to its elevation strategy. However, we note that the document [REDACTED].
- 8.236 An internal JD Sports email chain from July 2019 discusses the impact of elevated Sports Direct stores on JD Sports stores. The email identifies the following issues as being relevant:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED]; and
 - (d) [REDACTED].

²⁹¹ We note that JD Sports has submitted [REDACTED] Sports Direct is focusing its strategy on opening new and elevated stores in prime city-centre locations in direct proximity to JD Sports' stores.

8.237 The same email goes on to state that [REDACTED]. In our view, this supports the notion that even if Sports Direct were to elevate its store proposition successfully and get access to more similar products to JD Sports, it would still take time for perceptions of Sports Direct to change and for it to earn recognition as a more premium retailer among consumers, comparable to the Parties. This is supported by our store exit survey, which found that the Parties' customers were most likely to have visited the other Party's store (39% of JD Sports footwear customers had looked in Footasylum stores and 79% of Footasylum footwear customers had looked in a JD Sports store), before going to a JD Sports or Footasylum store where they made a purchase. A smaller proportion (19% for JD Sports customers and 9% for Footasylum customers) had visited a Sports Direct store beforehand.^{292,293}

8.238 Another email in December 2018 from [REDACTED] to JD Sports recaps an 'analysts meeting' attended by [REDACTED], noting that at the meeting [REDACTED]. We note that such exogenous factors may occur in the future, meaning that while [REDACTED] may not necessarily be realised in the future, in the event of unfavourable trading conditions.

8.239 JD Sports has submitted data to us estimating the impact of the opening of an elevated Sports Direct store on its nearby stores. It submitted estimates of the effect on revenues at these stores on an annual like for like basis relative to the store's performance on the same basis. The results of this analysis are summarised in Figure 8.1.²⁹⁴

Figure 8.1: Impact of elevated Sports Direct stores on nearby JD Sports store revenue

[REDACTED]

* [REDACTED]
† [REDACTED]
‡ [REDACTED].
§ [REDACTED]

Note: [REDACTED].

8.240 In the same submission, JD Sports also reported estimated impacts for the following locations (estimates in parentheses): [REDACTED]. These estimates are not presented above as the [REDACTED]. We note that these estimates may be affected by an 'opening bubble' effect, where sales decrease temporarily at adjacent stores due to the novelty of the new store. [REDACTED].

²⁹² For comparison, 18% of JD Sports customers had looked in a Foot Locker store and 18% of Footasylum customers had looked in a Foot Locker store.

²⁹³ [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020.](#)

²⁹⁴ For context, a Foot Locker closure (24 to 26 weeks prior) leads to [REDACTED] in JD Sports revenue of between [REDACTED]% and [REDACTED]% while a Footasylum closure (9 to 10 weeks prior) leads to [REDACTED] in JD Sports revenue of between [REDACTED]% and [REDACTED]%.

Survey results

8.241 Since some elevated Sports Direct stores already exist, where our store exit survey was carried out in areas where these stores were present, we have some evidence on whether they have changed the nature of Sports Directs' competitive constraint on the Parties. Although our survey only captures four elevated stores, and therefore we can place only limited weight on this comparison, there was no clear difference in diversion between the Parties when an elevated Sports Direct was present.

Provisional view on changes in retailers' positioning

8.242 We have considered evidence submitted to us by Frasers Group on the success of its elevation strategy, particularly in relation to its Sports Direct fascia and getting access to branded products from the key suppliers. We have also considered internal documents and data from the Parties considering Frasers Group's (particularly in relation to Sports Direct) elevation and its impact on them.

8.243 Based on the evidence from JD Sports' internal documents, we consider that JD Sports is unsure of the likely success of Frasers Group's elevation strategy but considers that if it was to be successful it would increase the strength of Sports Direct as a competitor.

8.244 The evidence suggests that elevation on the part of Sports Direct is ongoing [REDACTED]. However, we consider that its future commitment to elevation is subject to some risks, eg product lead-time and suppliers' support. While we recognise that [REDACTED]. Further, given the difference from the Sports Direct fascia's current offerings, [REDACTED]. We also consider that it may take time for consumers to change their view of the Sports Direct fascia and accordingly update their search habits.

8.245 As discussed in paragraphs 8.26 - 8.34, we recognise that suppliers can restrict retailers' access to products through their segmentation policies and that these are strategic decisions, which suppliers are able to change or amend. However, we have not seen any evidence to suggest that [REDACTED].

8.246 Further, we consider that the evidence on the overall impact of Frasers Group's elevation strategy on the Parties is mixed, for example findings from our store exit survey that diversion ratios are similar for elevated and non-elevated Sports Direct stores, but we note that [REDACTED].

8.247 Our provisional view is that, on the basis of the evidence available, we cannot conclude with sufficient certainty that Frasers Group's elevation strategy will significantly change the strength of the competitive constraint on the Parties

from Sports Direct in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

Retailer growth

DTC

8.248 As discussed in chapter 2, the key suppliers in the market (Nike and adidas) offer their branded products to consumers through two channels -their wholesale offering to retailers and their own DTC retail offering.

8.249 Our analysis set out earlier in this chapter (including our review of internal documents, our surveys and our entry-exit analysis) has taken account of the constraint the DTC channel currently has on the Parties.²⁹⁵ However, we recognise that as the market develops, there is the potential for the competitive constraint exerted by the suppliers' DTC offering to increase.

8.250 Nike and adidas are the two most important suppliers in the sports-inspired casual footwear market and we have therefore focused our assessment of DTC growth on these suppliers.

- *Recent growth*

8.251 Globally, the relative importance of DTC has increased at a significant rate in recent years; for example, Berenberg estimated that DTC sales from Nike (globally) grew from roughly 18% of its total revenues in the financial year 2012/13 to 30% in the financial year 2017/18.²⁹⁶ However, in the UK, the relative importance of DTC [redacted]. Nike DTC footwear sales grew [redacted] with its wholesale business, the share of sales generated through its DTC channel increased by [redacted] percentage points between September 2014 and September 2019 to reach [redacted]% of its total UK sales. Similarly, adidas' DTC sales in the UK grew from [redacted]% of its overall business in the calendar year 2015 to [redacted]% in 2018.²⁹⁷

8.252 We consider that the data shows [redacted] through which revenue is generated for both Nike and adidas. In support of this view, Nike told us that it:

does not operate in isolation but works together with its retailers to continuously improve its offering to deliver a seamless brand and shopping experience throughout the market. It is therefore in

²⁹⁵ Although we note that the entry-exit analysis does not capture the role of online constraints.

²⁹⁶ Berenberg Sports Retail, Sports Retail: the game is changing report, 9 November 2018, Figure 14.

²⁹⁷ CMA analysis of data provided by Nike and adidas.

Nike's express interest to have successful retailers, especially as they sell multiple brands and the vast majority of consumers will always compare offerings from different brands.

- *Future growth*

8.253 Both Nike and adidas have made public statements about their future strategy and desire to grow their DTC global offering, primarily online.²⁹⁸ We asked about their future plans and asked for internal strategy documents in order to understand how their UK DTC sales are likely to evolve in the foreseeable future.

8.254 Both Nike and adidas forecast that their UK DTC channel will increase in size. Nike forecasts that its UK DTC online sales will grow from £[redacted] in the financial year 2019/20 to £[redacted] in the financial year 2022/23, roughly [redacted].²⁹⁹ However, its wholesale business is set to grow [redacted]. [redacted], its share of wholesale revenue is predicted to [redacted]% of total revenue (footwear and apparel) in the financial year 2019/20 to [redacted]% in the financial year 2022/23. Nike's UK in-store growth is set [redacted].

8.255 adidas's [redacted]. It also confirmed that its DTC growth rate at a global level is forecast to be [redacted]% in 2020 and [redacted]% in 2021. However, we recognise that these forecasts may not apply to the UK, [redacted].

8.256 adidas's growth plans in-store [redacted].

8.257 We have also asked Nike and adidas how they anticipate achieving their projected DTC growth. In response, Nike stated that:

growth opportunities exist [redacted].

8.258 adidas's [redacted].

8.259 We also note that wider market developments may occur in the foreseeable future that could strengthen the key suppliers' ability to sell directly to consumers. For example, Instagram is developing Instagram Shopping and Instagram Checkout to give businesses a storefront for people to explore products and purchase within the app. We asked Instagram about its UK plans for Instagram Shopping and Instagram Checkout. [redacted]. We note that, in addition to [redacted].

²⁹⁸ Nike, *NIKE, Inc. Announces New Consumer Direct Offense: A Faster Pipeline to Serve Consumers Personally, At Scale*, 15 June 2017.

²⁹⁹ Nike forecasts were provided in \$, we converted to £ at 13 Jan 2020 spot rate of £1=\$1.3.

Provisional view on DTC growth

- 8.260 In our view based on the evidence set out above taken in round, we consider that Nike's and adidas's DTC sales are likely to grow at a significant rate globally. On that same basis, we consider that it is likely that their DTC offer will continue to grow strongly in the UK, but predominantly online. In particular, there is evidence which indicates that such growth is likely reflective of general growth in the market and that the ratio of DTC sales to wholesale sales will not change significantly in the foreseeable future.
- 8.261 Nike and adidas's DTC offer is currently present in both the in-store and online segments of the market. In our view, based on the evidence available, we consider that the growth in Nike's and adidas' DTC sales is likely to be focused toward the online segment. We also note that the initiatives that they described to enable them to achieve their DTC growth do not appear to amount to a substantial repositioning of their offer.
- 8.262 On that basis, our provisional view is that over time the key suppliers' DTC offer may become more of a constraint online but not in-store. The evidence does not show with sufficient certainty that Nike's and adidas's DTC offer across either channel, will become a significantly stronger constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

Multi-brand retailers

- 8.263 As well as considering suppliers' mono-brand DTC offer, we have considered whether multi-brand retailers might materially grow their proposition and sales of sports-inspired casual footwear, such that their constraint on the Parties would differ in the foreseeable future.

- *Foot Locker*

- 8.264 Foot Locker has recently begun to open new 'power stores', which are stores that are significantly larger than its traditional stores. It has two power stores in the UK, in London and Liverpool, both of which were opened before 2019. [REDACTED] its most recent openings and [REDACTED]. Foot Locker's number of stores in the UK was stable in 2019 with six store openings and six store closures. [REDACTED].
- 8.265 As set out in paragraph 8.196, we have provisionally found that Foot Locker is currently a strong constraint on the Parties in the sports-inspired casual footwear market. We recognise that this constraint could be strengthened further if more larger stores were opened in future. However, we consider that the evidence does not show that it will become a significantly stronger

constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

- *Other retailers*

8.266 Some multi-brand retailers such as ASOS and Next have recently started selling sports-inspired products. Therefore, it is possible that they may grow, though we cannot say how significant such growth might be. We recognise that in keeping with the dynamism in the market and normal commercial pressures, some retailers are likely to be successful and others less successful. However, we have not seen evidence of [X] from these retailers such that any of them would become a significantly stronger constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

Provisional view on multi-brand retailers' growth

8.267 Overall, it is our provisional view that while there is some scope for the strength of the competitive constraints on the Parties in the market for the supply of sports-inspired casual footwear from other retailers, to increase over time, the evidence does not show with sufficient certainty that this would result in a significantly stronger constraint on the Parties in the foreseeable future.

Provisional view on market developments

8.268 On balance, it is our provisional view that the Sports Direct fascia of Frasers Group, through its elevated stores, may become a more direct competitor to the Parties to some extent over the next few years. However, we consider that the evidence does not show with sufficient certainty that it will become a significantly stronger constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

8.269 The evidence shows that Nike and adidas are likely to continue to grow their DTC sales, primarily online. However, we consider that there is evidence that the market as a whole is growing but that DTC growth does not appear likely to be at the expense of wholesale sales, and DTC growth will be in line with general growth in this market. Therefore, in our provisional view the evidence does not show with sufficient certainty that either Nike or adidas will become a significantly stronger constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

8.270 For Foot Locker, while we recognise that it is already a strong constraint on the Parties in the sports-inspired casual footwear market, it is our provisional

view that the evidence does not show that it will become a significantly stronger constraint on the Parties in the market for the retail supply of sports-inspired casual footwear in the foreseeable future.

8.271 Overall, we provisionally find that, taken together, the evidence does not show with sufficient certainty that the market developments examined above would amount to a materially stronger competitive constraint on the Parties in the market for the supply of sports-inspired casual footwear in the foreseeable future.

Provisional conclusion

8.272 In our competitive assessment, we have considered the degree of competition between the Parties and other retailers, both now and in the foreseeable future. As part of this assessment we have looked at a range of evidence which we have then considered in the round to form our provisional conclusion as to whether the Merger has resulted or may be expected to result in an SLC in the market for the retail supply of sports-inspired casual footwear (in-store and online) in the UK.

8.273 We have first assessed the role of the suppliers and how retailers compete in that market. We provisionally find that suppliers and retailers restrict and influence aspects of retail competition. Suppliers can restrict retailers' offerings, primarily through determining the products and volumes that retailers can access. Suppliers also restrict quality and service aspects of retailers' offerings to some extent by requiring retailers to meet specified minimum standards of quality and service as a precondition of product access. We also consider that any restrictions that suppliers pose arise primarily from suppliers' own strategic decisions and, as such, could be changed by suppliers at any time post-Merger.

8.274 Notwithstanding the restrictions that suppliers place on the aspects of retailers' offerings described above, we provisionally find that there remains significant scope for retail competition in the relevant market. There is evidence that retailers compete above and beyond the minimum standards set by suppliers, in particular:

- (a) that the Parties compete head-to-head, as well as with other competitors, on a multitude of different PQRS aspects in a bid to attract consumers and generate sales (eg marketing activity, store refurbishments, website functionality and loyalty programmes); and
- (b) suppliers can leverage their influence (eg through benchmarking of retailers) to encourage retailers to compete above and beyond their

minimum standards. We note that suppliers are not fully incentivised to sufficiently restrict any deterioration in retailers' offering post-Merger in order to protect the interests of consumers.

- 8.275 Overall, we provisionally find that the role of suppliers would not prevent the Parties from having either the ability or incentive to degrade PQRS post-Merger.
- 8.276 Next, we have considered market shares, the nature of the Parties' offerings and third party views on closeness of competition. With respect to market shares, we provisionally find that the Parties are both large national multi-brand retailers of sports-inspired casual footwear. JD Sports is the largest retailer in this market, Footasylum is smaller and a few other retailers have a significant presence, including in particular Sports Direct and Nike. However, we consider that market shares only give a basic indication of the Parties' presence and do not capture the closeness of competition between retailers in differentiated markets, such as this one.
- 8.277 Following our assessment of the Parties' offerings we provisionally find that the Parties have very similar footwear offerings. Foot Locker has a similar offering to the Parties. Nike, adidas, ASOS, Office and Schuh also have some similarities to the Parties although to a lesser extent than the Parties to each other. Other retailers have less similar offerings. We asked third parties to score retailers in the market in terms of closeness of competition between the Parties and to other retailers. The Parties scored highly, as did Foot Locker (Nike and adidas also scored highly but were mentioned by far fewer third parties). On that basis, we consider that third parties view the Parties as competing closely against each other with few other close constraints, except for Foot Locker.
- 8.278 We have next examined the Parties' internal documents, considering in particular the extent to which they monitor each other and other retailers and their competitive responses. We provisionally find that:
- (a) Footasylum's documents, taken together, demonstrate that Footasylum sees JD Sports as its closest competitor with only Foot Locker also seen as a close competitor; and
 - (b) JD Sports' documents, taken together, demonstrate that JD Sports sees Footasylum as a close competitor alongside Foot Locker, ASOS, Nike and adidas.
- 8.279 We consider that these documents show a low degree of monitoring by the Parties of other retailers.

- 8.280 Through our store exit and online surveys we obtained information from the Parties' customers about their shopping behaviour and their next best alternatives to the Parties' stores and websites. We note that we have not placed full evidential weight on the online survey results (see chapter 6).
- 8.281 In both the store exit survey and the online survey, substantially more of Footasylum's customers would divert to JD Sports than to any other retailer, which shows that Footasylum's footwear customers view JD Sports as the closest substitute for Footasylum. JD Sports' in-store footwear customers are most likely to state that their next best alternative is Footasylum. For JD Sports' online footwear customers, Nike is seen by consumers as the next best alternative with Footasylum and Foot Locker also seen as close substitutes.
- 8.282 We have used the diversion ratios to calculate GUPPIs and provisionally find these to be high, particularly for Footasylum but also for JD Sports. The asymmetry of the GUPPIs is consistent with other evidence elsewhere in this chapter, for example the Parties' own internal documents. We consider that the in-store GUPPIs, for both JD Sports and Footasylum, demonstrate a strong incentive for the Parties to degrade PQRS across the Parties' sports-inspired casual footwear offerings post-Merger. Although the online and combined GUPPIs are lower than the in-store GUPPIs, they still indicate a strong incentive to raise prices.
- 8.283 We have analysed the impact of store openings and closures by Footasylum and other retailers on the revenues of JD Sports' stores and JD Sports' offering. This entry-exit analysis indicates Footasylum to be the only retailer that has a negative impact on JD Sports in at least one of the analytical approaches across all three variations of this entry-exit analysis, ie an effect on revenue, the proportion of products sold at full price and the number of years since last refurbishment. We provisionally find that this evidence indicates that Footasylum is a close competitor to JD Sports and exerts a constraint on JD Sports.
- 8.284 Taken together, the evidence shows that the Parties are close competitors to each other, with JD Sports providing a stronger constraint on Footasylum than vice-versa. There are currently few other strong competitors to the Parties, with Foot Locker providing a strong constraint and Nike (online) exerting some constraint but less than each does on the other.
- 8.285 We have also considered whether there is scope for the strength of the competitive constraints from other retailers on the Parties to increase, including in particular via the repositioning of Frasers Group's Sports Direct fascia, and the growth of Nike's and adidas's DTC channels and Foot

Locker's number and type of stores in the UK. We provisionally find that, on the basis of the evidence available, we cannot conclude with sufficient certainty that the repositioning or growth of any retailer will significantly change their competitive strength in the foreseeable future. Overall, we provisionally find that, taken together, the evidence does not show with sufficient certainty that such market developments would amount to a materially stronger competitive constraint on the Parties in the market for the supply of sports-inspired casual footwear in the foreseeable future.

- 8.286 Based on our assessment, we provisionally find 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.
- 8.287 On the basis of the evidence set out above taken in the round, we provisionally conclude that the Merger has resulted or may be expected to result in a SLC in the market for the retail supply of sports-inspired casual footwear (in-store and online) in the UK.
- 8.288 We have considered whether there are any countervailing factors (such as entry or expansion by other retailers or efficiencies) which would be timely, likely and sufficient to prevent this SLC, in chapter 11.

9. Our competitive assessment of unilateral effects - apparel

Introduction

- 9.1 In this chapter, we have set out our assessment of the effect of the Merger on the retail supply of sports-inspired casual apparel at a national level.
- 9.2 We have adopted the same approach to our assessment as that described in paragraph 8.2 - 8.13.
- 9.3 In our assessment, we have considered how closely the Parties compete with one another and whether the removal of the constraint the Parties place on each other is likely to lead to an SLC in the sports-inspired casual apparel market. As part of this assessment we have also considered other current competitive constraints on the Parties from other retailers and suppliers.
- 9.4 In addition to current competitive constraints, we have also considered whether any market developments (ie future changes in market constraints) are likely to affect our assessment. This includes assessing whether there are any changes underway or likely to happen in the foreseeable future (ie the next few years), such as other retailers in the market repositioning their offer or substantially growing, that might materially change the nature of the existing competitive constraints on the Parties.
- 9.5 We have reviewed a range of evidence collected from the Parties, other retailers and suppliers, as well as evidence from the Parties' customers gathered via our surveys (see chapter 6). We have assessed this evidence in the round to form our provisional decision.
- 9.6 We note that a number of submissions from the Parties and third parties covered both the footwear and apparel product markets. We have set out those specific to apparel in this chapter, whereas those applicable to both footwear and apparel are referred to in this chapter but are covered in detail in chapter 8.
- 9.7 In the following sub-section, we have set out our approach to our assessment. The remainder of this chapter is then structured as follows:
- (a) role of suppliers;
 - (b) how retailers compete;
 - (c) market shares;

- (d) retailers' offerings;
- (e) internal documents;
- (f) surveys;
- (g) GUPPIs;
- (h) entry-exit analysis;
- (i) overview of current competitive constraints; and
- (j) market developments.

9.8 Within each of these sections, we have first set out any relevant submissions made by the Parties and third parties, before setting out our own assessment of these.

9.9 Lastly, we have set out our provisional conclusion on competitive effects in the sports-inspired casual apparel market.

Approach to our assessment

9.10 As discussed in chapters 2 and 7, there is a range of different retailers in the sports-inspired casual apparel market, including the Parties, and each of these is competing to attract consumers through differentiated offerings.

9.11 Many of the key elements of differentiation in this market are similar to those for footwear, for example:

- the broad product type (some retailers focus more on fashion apparel and others on sports apparel and the boundaries between these are blurred (see chapters 2 and 7));
- the range of branded apparel from suppliers and retailers' own-brand apparel;
- the value proposition (some retailers focus on higher-priced products, others on lower-priced products);
- the network of retailers' stores and/or online offering (with some retailers only operating online) and the quality of these; and
- the consumer target market (including age and/or gender).

9.12 Much like in footwear, part of retailers' differentiation comes from their access to branded products from suppliers (in particular Nike and adidas), therefore

suppliers have an important role in this market. However, Nike and adidas are less significant in apparel than they are in footwear, with retailers stocking a wider range of brands (and own-brands) and Nike and adidas constituting a much smaller proportion of revenues.

- 9.13 Given this, we have first considered the role of suppliers on retail competition and the extent to which the Parties have the ability to flex their offering, before considering evidence on the competitive constraints between the Parties and from other retailers in assessing the effect of the Merger.

Role of suppliers

- 9.14 In this section we have explored the role of suppliers of branded products in competition at the retail level and whether they affect competition between retailers, including the Parties.

Parties' views

- 9.15 Footasylum submitted that there were [redacted]. It highlighted that [redacted]. However, it also submitted in contrast to footwear that [redacted].
- 9.16 JD Sports submitted that other suppliers were [redacted] with regard to [redacted] than [redacted], and that the arrangements for apparel allocations were usually '[redacted]' than for footwear, with JD Sports [redacted].³⁰⁰

Third parties' views

- 9.17 Some third parties highlighted the important role of suppliers in the market in their submissions, including in terms of retailers' access to branded products, though less so than in relation to footwear (see paragraphs 8.18 - 8.22 for details).
- 9.18 [redacted] submitted that while suppliers set a minimum standard for QRS, the Parties did engage in retail competition on QRS over and above this minimum, as outlined in paragraph 8.19, which is also relevant to apparel.
- 9.19 As set out in 8.20, [redacted] said that 'some products are limited by supply constraints (for example: production capacity) and this [is] more prevalent for footwear than it is apparel.'

³⁰⁰ We note that JD Sports also made submissions on the role of suppliers other than Nike and adidas in the market, which we have considered in our assessment.

Our assessment

- 9.20 In apparel, like in footwear, branded products comprise the majority of the market.³⁰¹ However there is a wider range of brands than in footwear, with less concentration of the Nike and adidas brands in apparel. This is also the case for the Parties' apparel offer; Nike and adidas are less significant than in footwear (they accounted for [X] % of JD Sports' 2018 apparel revenues and [X] % of Footasylum's, see Table 9.1, compared to [X] % and [X] % respectively in footwear).
- 9.21 Own-brands are also a significant part of the market and account for a greater proportion of the Parties' sales than in footwear. Footasylum has a number of own-brands, including Kings Will Dream and Glorious Gangsta, and own-brand accounted for [X] % of its apparel revenue in 2018.³⁰² JD Sports also sells own-brands including Supply & Demand and McKenzie, and own-brand accounted for around [X] % of its apparel revenue in 2018.³⁰³
- 9.22 Given the importance of branded products, as with footwear, we have explored how suppliers of branded products affect competition between retailers, including the Parties. We have assessed a range of information provided by suppliers on their strategies, distribution policies, standard terms and conditions and individual trade terms with retailers. We note that suppliers typically categorise retailers into segments, as they do for footwear. Retailers are generally allocated to the same category and tier for apparel as they are for footwear. Therefore, much of the discussion for footwear in chapter 8 applies equally to apparel.³⁰⁴
- 9.23 We have looked at restrictions imposed by suppliers on retailers and also at the influence exerted by suppliers over retailers. We recognise that these two areas are interrelated, but for ease of discussion we have considered them in turn below. Lastly, we have considered whether supplier and consumer incentives are aligned.
- 9.24 This assessment is relevant to the Merger in two respects:
- (a) whether suppliers' impact on retailers' offerings through any restrictions and/or influence they have, is such that any remaining retail competitive

³⁰¹ For example, across the market as a whole, together adidas, Nike, Puma, Under Armour, Reebok, New Balance, Converse, The North Face, Vans, Ellesse, Fila and Asics accounted for 80% of revenue.

³⁰² We note that our estimate of the proportion of Footasylum's own-brand revenues relates to its total sports-inspired casual apparel revenues (eg excluding denim, underwear, bags etc).

³⁰³ We note that our estimate of the proportion of JD Sports' own-brand apparel revenues relates to its total sports-inspired casual apparel revenues (eg excluding denim, underwear etc).

³⁰⁴ [X] has separate segmentation categories for footwear and apparel.

interaction is largely immaterial (meaning any competition lost from the Merger may not be substantial); and

- (b) whether suppliers are incentivised to constrain PQRS for the Merged Entity sufficiently, such that consumers would not be worse off from the Merger.

Restrictions

- 9.25 As discussed in chapter 8 for footwear, suppliers use selective distribution arrangements and segmentation policies to restrict where and how their products are made available to retailers (see paragraphs 8.26 - 8.34).
- 9.26 Much like in footwear, we have found that the level of these restrictions varies across suppliers. Nike's and adidas's policies are materially more restrictive than those of smaller brands.³⁰⁵ For example, in apparel we have seen evidence of retailers seeking access to certain Nike and adidas apparel products but being denied them,³⁰⁶ whereas this is not the case for smaller brands. However unlike in footwear, suppliers typically do not restrict the volumes of apparel products available to retailers, if those retailers had access to them. This was supported by evidence from [REDACTED] who told us that [REDACTED].
- 9.27 In addition to restricting product access, suppliers can impose some other types of restrictions affecting the quality of the consumer experience offered by retailers, as we have found in footwear.³⁰⁷ For example, [REDACTED].³⁰⁸ Where restrictions on quality are imposed this typically establishes a 'floor', above which retailers are free to determine how they operate, leaving scope for competition on a variety of aspects of their offerings to take place.
- 9.28 We consider that the restrictions imposed by Nike and adidas are likely to have less of an effect in apparel than in footwear, because their share of the market is lower and therefore retailers are much less dependent on them than they are in footwear. We also note that retailers' own-brands are important in this market (for Footasylum own-brand makes up a significant proportion of its

³⁰⁵ JD Sports told us that for smaller suppliers the allocation arrangements for apparel are usually [REDACTED] than footwear.

³⁰⁶ For example, [REDACTED].

³⁰⁷ JD Sports submitted that 'Nike and adidas also exercise quality control over JD Sports' national-level, non-price offer, with high expectations regarding store and product presentation.' JD Sports, *Initial Phase 2 Submission*, paragraph 203. According to JD Sports, Nike and adidas do this by (i) [REDACTED] (ii) [REDACTED], and (iii) implicitly threatening to move the retailer to another segment if the quality of the stores decreases. Footasylum stated that [REDACTED].

³⁰⁸ CMA analysis of selective distribution arrangements [REDACTED].

apparel - see paragraph 9.21) and that retailers do not face any restrictions from suppliers on these products.

- 9.29 Further, we note (as with footwear) that to the extent there are restrictions, these arise from suppliers' own strategic decisions and could therefore be changed or amended by suppliers at any time post-Merger.³⁰⁹

Influence

- 9.30 As for footwear (paragraphs 8.35 - 8.37), in addition to these direct restrictions, suppliers may also indirectly influence retailers' offerings in several ways. For example, for branded products, RRP are usually included in the product catalogue presented to retailers. While retailers are contractually free to set their own prices, retailers told us that their starting point was typically the RRP although some discounting does occur (see paragraph 8.35). Some retailers told us that they felt some pressure (at least implicitly) to sell products at RRP. This pressure is perceived by retailers to be greater as regards Nike and adidas than other suppliers. This indicates that suppliers may have some influence on pricing of branded products.³¹⁰
- 9.31 Retailers may also typically negotiate individual discounts from suppliers' wholesale price, which are often subject to the retailer meeting certain conditions or KPIs. Such individual discounts (and the components of this) are typically set out in the distribution arrangement between the retailer and supplier. These may include meeting certain thresholds for volumes, growth, returned orders and store quality.
- 9.32 [REDACTED].
- 9.33 However, as noted above, suppliers - in particular Nike and adidas - are likely to exert less influence in apparel than in footwear given that retailers are much less dependent on them in this market.

Incentives

- 9.34 As for footwear (paragraphs 8.38 - 8.43), we consider that suppliers' interests are not fully aligned with those of consumers, which means that any restrictions and/or influence they impose do not always result in benefits for retailers' consumers. While suppliers may benefit from greater retail competition on quality and services, this is not necessarily the case for price

³⁰⁹ We note in this context that [REDACTED].

³¹⁰ In this context, we note that the Commission has recognised that, in certain circumstances, there may be legitimate reasons (including the efficient operation of a selective distribution arrangement) why a supplier may seek to have some influence over retail pricing. See European Commission, [Guidelines on Vertical Restraints](#).

competition. Suppliers' DTC channels also compete directly with retailers which may also undermine their incentives for encouraging increased retail competition.

- 9.35 Overall, we consider that suppliers have mixed incentives regarding retail competition, which means that they will not act in the best interests of consumers in all cases.

Provisional view on the role of suppliers

- 9.36 We provisionally find that the role of suppliers and the restrictions and influence they exert is less significant in apparel than in footwear. There is less dependence on Nike and adidas in the apparel market, as a greater proportion of apparel sales comes from a wider range of other suppliers of branded products (who are generally less restrictive). Retailers (including the Parties) also develop, stock and price their own-brands and therefore do not face any restrictions from suppliers on these products.
- 9.37 Suppliers can restrict retailers' offerings through the products and volumes that retailers can access and some aspects of quality and service, which effectively establish a minimum standard for retailers. Although, these could be changed by suppliers at any time post-Merger. There is evidence that retailers compete above and beyond this and that this is encouraged by suppliers (as described in the next section).
- 9.38 Further, we provisionally find that suppliers' interests are not fully aligned with those of consumers. While suppliers may benefit from retail competition on quality and service, this is not necessarily the case for price competition. This is also the case for suppliers' DTC channels where they compete directly with retailers. Therefore, we do not consider that suppliers are fully incentivised to sufficiently restrict any deterioration in the Parties' offering post-Merger in order to protect the interests of consumers.

How retailers compete

- 9.39 We have found that suppliers affect some aspects of retailers' offering but that this is of much less significance in apparel than in footwear. In this section we have considered whether the Parties are able to, and do, compete on PQRS and therefore whether they have scope to change their offerings post-Merger.

Parties' views

- 9.40 As set out in chapter 8, JD Sports submitted that the market was subject to intense market-wide rivalry, and that it faced dynamic and disruptive competition from a wide range of other retailers.
- 9.41 JD Sports also submitted that there were a number of reasons why it had no incentive to worsen PQRS. These reasons included the aggregate competitive pressures of horizontal and vertical constraints from suppliers of branded products, intense competition from rivals across the spectrum of products they offered and its view that Footasylum under the counterfactual was not a material constraint on JD Sports.

Our assessment

- 9.42 We consider that many of the parameters of competition that the Parties compete on are broadly the same for apparel as they are for footwear (such as discounting, store opening times, refurbishment plans, in-store queuing times and pay-later options), and therefore our assessment on the parameters of competition for footwear (set out in paragraphs 8.54 - 8.60) largely applies to apparel.
- 9.43 For example, regarding price:
- (a) the value (ie the difference in realised sales value against the sales value if sold at full price) of JD Sports' apparel clearance discounts amounted to £[redacted] ([redacted]% of its apparel revenue);
 - (b) the value of JD Sports' apparel non-clearance discounts amounted to £[redacted] ([redacted]% of its apparel revenue);
 - (c) the value of Footasylum's total (footwear and apparel) clearance discounts were £[redacted] ([redacted]% of revenues); and
 - (d) and the value of Footasylum's total (footwear and apparel) promotional discounts (temporary reductions in price) amounted to £[redacted] ([redacted]% of revenues).
- 9.44 Two further elements to this are the range and mix of brands that are stocked by retailers and the importance of own-brand in apparel. First, the range of brands that are stocked by retailers is much broader in apparel (although the range within brands may be smaller), which means there is even greater

competition between retailers over the selection of brands to stock.³¹¹ Also, as discussed in paragraph 9.20, Nike and adidas are less important in the apparel market than in the footwear market.

- 9.45 Second, own-brand products are a significant part of the sports-inspired casual apparel market. Own-brand is a way in which retailers can differentiate themselves and another parameter on which they compete. For example, [REDACTED] (Footasylum's own-brand) was the [REDACTED] apparel brand for Footasylum in 2018. As noted in paragraph 9.21, the Parties both offer a number of their own-brand sports-inspired apparel products and in the case of Footasylum these brands represent a significant portion (approximately [REDACTED]% in 2018) of its sales. JD Sports also identified the importance of own-brands as part of its rationale for the Merger, [REDACTED] (see chapter 5).
- 9.46 For own-brand products retailers set their own prices, although retailers typically have regard to other price points in the market, including those of branded products. JD Sports submitted that it prices its own-brand products by reference to the [REDACTED].

Provisional view on how retailers compete

- 9.47 As for footwear, we provisionally find that there is evidence that the Parties compete head-to-head, as well as with other competitors, on a multitude of different PQRS aspects in a bid to attract consumers and generate sales. Evidence of the Parties' market monitoring across footwear and apparel, indicates that there is retail level competition across all aspects of PQRS, despite some influence and restrictions from suppliers.
- 9.48 Retail competition in this market manifests in many different ways and these aspects are important to consumers (see paragraph 9.101). There are significant aspects of retailers' offerings over which the Parties and other retailers compete, eg the price and development of own-brands, range and mix of other brands, level of discounts, customer service, loyalty schemes, future innovation, delivery speed and website functionality.
- 9.49 We have looked at a range of evidence relating to the closeness of competition and the constraints from other retailers, set out in subsequent sections, to determine whether the Parties will have the incentive and be able to deteriorate these aspects of PQRS post-Merger.

³¹¹ For example, one internal document from Footasylum stated that '[REDACTED]'. Another document from Footasylum stated: '[REDACTED]'.

Market shares

9.50 We have looked at market shares as an indicator of the presence that different retailers have in the relevant market.

Parties' views

9.51 As set out in chapter 8, JD Sports submitted that, while market shares were not 'determinative' of unilateral effects, their quantification still mattered since it helped 'identify the structural change arising from the Merger and the national scale and identity of existing competitors'.

9.52 JD Sports submitted that the Merger had a modest effect on retail market concentration, noting that [X]% of Footasylum's apparel sales were 'sports-heritage branded', and that Footasylum's market share represented 'a small increment not at all consistent with being a particularly close national competitor to JD Sports'.^{312,313} The Parties further submitted that this was relevant because 'the smaller the change of national market structure, and the more significant existing competitors, the most [sic] easily any lost constraint (even a relatively 'close' one) would be addressed, in aggregate, by the brands' influence over the retail market and/or replaced by expansion, entry or repositioning of rivals'.

Our assessment

9.53 The Parties are both large national multi-brand retailers of sports-inspired casual apparel. We have estimated that JD Sports is the largest retailer in this market with a share of [20-40]% ([X]%).^{314,315} Footasylum is smaller, with a share of [0-5%] ([X]%).³¹⁶ There are also a number of other retailers which

³¹² JD Sports, *Initial Phase 2 Submission*, paragraph 7(a).

³¹³ [X].

³¹⁴ Our approach to calculating market shares used two methodologies, each including or excluding different products. Ranges for retailers' shares under each of these methodologies are set out in Appendix G, however, for presentational purposes we have combined the two ranges for each retailer in this paragraph. The main driver of differences between the two methodologies was the extent to which Sports Direct's apparel revenues are classified as sports-inspired casual apparel (and therefore included in the relevant market) or other apparel segments (and therefore not included). This is explained in more detail in Appendix G. We consider that further work to narrow down the precise market share is not necessary given the limited use to which we have put this market share evidence.

³¹⁵ JD Sports is the largest retailer when the mid-point of our retailer's range is used as the estimate for that retailer.

³¹⁶ The range given for JD Sports' and Footasylum's market shares reflects different estimates for competitors' revenues in the relevant market, particularly the extent to which Sports Direct's activities are ascribed to sports-inspired casual footwear (and therefore included in the relevant market) or other footwear segments (and therefore not included). This is explained in more detail in Appendix G. We consider that further work to narrow down the precise market share is not necessary given the limited use to which we have put this market share evidence.

have a presence in this market. Sports Direct has a share between 0-40% ([X]%), and Primark³¹⁷ has a share of 10-20% ([X]%), depending on how their revenues are categorised, but no other retailer has a share above 10%. This wide variation in market shares estimates shows the difficulty in accurately estimating these in a differentiated market such as this. Further information on the different share estimates of retailers and their limitations is set out in Appendix G.

9.54 We note the Parties submitted that the share increment is low and therefore any loss in constraint is more easily addressed (see paragraph 9.52). We have examined market shares primarily in order to identify which other retailers supply goods within the relevant markets and to facilitate a better understanding of how the Merger may affect the level of concentration within the relevant markets. However, we consider that these market shares only give a basic indication of the Parties' presence and do not capture the closeness of competition between retailers in differentiated markets, such as this one.³¹⁸

Retailers' offerings

9.55 One way for us to identify relevant potential competitors is to assess the similarities and differences between retailers' offerings. This provides an indication of their likely strength and closeness.

Parties' views

9.56 JD Sports submitted that the Parties had a 'significantly differentiated customer offer.'³¹⁹ It submitted that Footasylum's apparel offering was more skewed towards own-brand or Bedroom Brands (which were 'urban' or 'streetwear'-inspired), whereas a large proportion of JD Sports' offering was branded (and sports-inspired).^{320,321} JD Sports also submitted that it had 'a very limited own label apparel offering, which is primarily focused on "basic"

³¹⁷ Primark has a relatively large market share. However, we consider that its apparel offering is significantly different to that of the Parties, as shown by the responses to our surveys and lack of other evidence that it competes with the Parties, hence it did not feature in detail in our assessment.

³¹⁸ Our view is that more information on closeness of competition and the significance for pricing incentives is captured in the GUPPI, than other potential measures, such as concentration measures. See: [Sainsbury's/Asda, Final Report](#), paragraph 8.247b.

³¹⁹ JD Sports, [Initial Phase 2 Submission](#), paragraph 6.

³²⁰ JD Sports, [Initial Phase 2 Submission](#), paragraph 6a and 6b.

³²¹ JD Sports, [Initial Phase 2 Submission](#), paragraph 7(a).

ranges offered under its McKenzie brand'³²² and that Footasylum's own-label products were highly differentiated from JD Sports.

- 9.57 JD Sports submitted that the Parties were therefore not particularly strong competitors to each other on own-brand apparel given the different nature of their offerings, and as own-brand apparel made up [X] % of JD Sports' apparel sales, compared to [X] % of own-brand apparel and Bedroom Brands for Footasylum.³²³ JD Sports told us that it priced its own-brand products by reference to the [X]. JD Sports submitted that it did not have regard to [X] when making pricing decisions for its own-brand products.
- 9.58 JD Sports highlighted that a number of 'fast fashion' retailers [X].³²⁴ It stated that Footasylum's closest competitors were fast fashion retailers such as River Island, Topshop/Topman, H&M and Zara, and not retailers of global sports-heritage brands, such as JD Sports.³²⁵ The Parties submitted that the purpose of highlighting that they each had different apparel ranges was not to imply that only identical products competed. On the contrary, non-identical products were a source of competition. The Parties submitted that for example 'all own-label fast fashion label products of Zara, Next, Topshop, River Island, H&M etc were by definition non-overlapping with the Parties, but were a significant constraint on Footasylum especially with its sweet spot of own-label/Bedroom Brand apparel'.
- 9.59 The Parties submitted estimates of the degree of overlap³²⁶ between their apparel offerings and noted that these showed their differentiation. The Parties further submitted that, within the overlapping product set, the brand mix was different.
- 9.60 As with footwear (see paragraph 8.70), JD Sports also submitted that a national analysis overstated the degree of overlap at the individual store level.

Our assessment

- 9.61 As discussed in chapters 2 and 7 there is a range of retailers in this market and below we have considered their propositions and how similar these are, for example in terms of their products, geographic coverage, and consumer

³²² JD Sports, *Initial Phase 2 Submission*, paragraph 277.

³²³ JD Sports, *Initial Phase 2 Submission*, paragraph 100.

³²⁴ JD Sports, *Initial Phase 2 Submission*, paragraph 74.

³²⁵ JD Sports, *Initial Phase 2 Submission*, paragraph 35.

³²⁶ The estimated sales-weighted overlap is [X] % from JD Sports' perspective, and [X] % from Footasylum's perspective.

base. We have also considered rankings of closeness between retailers as submitted by retailers themselves.

- 9.62 As part of this we have examined supplier/product overlap and retailers' shares of branded products which provide some indication on the offerings of retailers and subsequently, their potential competitive constraints. We note that products do not have to be identical to be substitutes³²⁷ and that consumer behaviour and stated preferences as evidenced in our surveys provide stronger evidence of the degree of substitutability of the Parties' offerings.
- 9.63 We consider that the more similar other retailers' offerings are to those of the Parties, the stronger their constraints are likely to be. For example, a retailer is likely to be a stronger constraint on the Parties if the following factors are similar to them: a retailer's overlap with the Parties across distribution channels;³²⁸ its access to and volumes of relevant branded products; how appealing its retail fascia is to the Parties' customers; and how appealing its in-store and online shopping experience is to the Parties' customers.

The Parties

- 9.64 The Parties both have an in-store and an online offering. There is a high degree of geographic overlap between the Parties' physical stores; all Footasylum stores overlap with at least one JD Sports store.³²⁹ Both of their online offerings are important channels for their respective businesses (representing [X]% of JD Sports' revenue and [X]% of Footasylum's revenue - see paragraph 7.86). While a lower proportion of its revenue, JD Sports has a significant online presence. For example, our online survey results suggest that of the Footasylum customers who had looked online somewhere other than Footasylum's own website before purchasing in-store at Footasylum, 70% had looked JD Sports' website.
- 9.65 The Parties both target a similar demographic - 16-24 year old consumers with a focus on males, although the focus on males is more pronounced for Footasylum.³³⁰ The majority of the apparel they sell is [X] apparel, although they both also sell [X] and [X] apparel.³³¹ JD Sports submitted that more

³²⁷ The Parties also acknowledged this. They submitted that '[X]'.

³²⁸ Through a presence in both distribution channels (in-store and online) and/or greater geographic overlap with the Parties in-store.

³²⁹ Where overlap is defined as being present within a 20-min drivetime. See [CMA, Phase 1 decision, paragraphs 140-142](#).

³³⁰ JD Sports, [Initial Phase 2 Submission](#), paragraphs 6 and 14.

³³¹ JD Sports' 2018 apparel sales were split, [X]% men's apparel, [X]% junior/infant apparel, [X]% women's apparel (this excludes replica textiles). Footasylum's 2018 apparel sales were split, [X]% men's apparel, [X]% junior/infant apparel, [X]% women's apparel.

than half of its customers were [redacted], although we note that this might be a reflection of the Parties' store environments appealing differently to the different genders, and in any case [redacted] apparel sales make up a minority its sales.

9.66 Both Parties stock a range of branded apparel as well as some own-brand apparel (as shown in Table 9.1). Relative to footwear, their sales are spread over a much wider set of brands. For Footasylum, [redacted]% of its sports-inspired casual apparel sales fell outside of its top 10 brands.

Table 9.1: Brands' share of the Parties' sports-inspired casual apparel revenues (2018)

<i>JD Sports</i>			<i>Footasylum</i>		
1	[redacted]	[redacted]	1	[redacted]	[redacted]
2	[redacted]	[redacted]	2	[redacted]	[redacted]
3	[redacted]	[redacted]	3	[redacted]	[redacted]
4	[redacted]	[redacted]	4	[redacted]	[redacted]
5	[redacted]	[redacted]	5	[redacted]	[redacted]
6	[redacted]	[redacted]	6	[redacted]	[redacted]
7	[redacted]	[redacted]	7	[redacted]	[redacted]
8	[redacted]	[redacted]	8	[redacted]	[redacted]
9	[redacted]	[redacted]	9	[redacted]	[redacted]
10	[redacted]	[redacted]	10	[redacted]	[redacted]
	[redacted]	[redacted]		[redacted]	[redacted]
Total		100%	Total		100%

Source: CMA analysis of Parties' data.

9.67 Both Parties have a substantially lower reliance on Nike and adidas in apparel than they do in footwear. As set out in Table 9.1, for JD Sports, [redacted]% of its total apparel sales came from Nike and [redacted]% from adidas. For Footasylum, [redacted]% of its total apparel sales came from Nike and [redacted]% from adidas.³³²

9.68 Although Nike and adidas are less important in apparel than in footwear, we have nonetheless compared the Parties' offerings of Nike and adidas apparel products (see Table 9.2 and Table 9.3, and Appendix G for more detail).³³³

³³² We also examined the sales-weighted brand cross-over at phase 1 and found a cross-over of [redacted]% from JD Sports' perspective and [redacted]% from Footasylum's perspective. See CMA, *Phase 1 Decision*, Table 2.

³³³ In our analysis we have treated each colourway (but not size) of a separate apparel item as a distinct product. We also examined a more aggregated product level (treating different colourways as the same product) and found similar results.

Table 9.2: Number of Nike apparel products sold by the Parties that were also sold by other retailers (6 months to June 2019)

Retailer	Number of products	Proportion of products		Retailer	Number of products	Proportion of products
JD Sports	[X]			Footasylum	[X]	
Retailer 1	[X]	49%		Retailer 1	[X]	59%
Retailer 2	[X]	31%		Retailer 2	[X]	47%
Retailer 3	[X]	23%		Retailer 3	[X]	41%
Retailer 4	[X]	20%		Retailer 4	[X]	34%
Retailer 5	[X]	18%		Retailer 5	[X]	31%
Retailer 6	[X]	17%		Retailer 6	[X]	25%
Retailer 7	[X]	16%		Retailer 7	[X]	25%
Retailer 8	[X]	15%		Retailer 8	[X]	23%
Retailer 9	[X]	15%		Retailer 9	[X]	20%
Retailer 10	[X]	14%		Retailer 10	[X]	14%

Note: [X]

Source: CMA analysis of data received from Nike and adidas.

Table 9.3: Number of adidas apparel products sold by the Parties that were also sold by other retailers (6 months to June 2019)

Retailer	Number of products	Proportion of products		Retailer	Number of products	Proportion of products
JD Sports	[X]			Footasylum	[X]	
Retailer 1	[X]	38%		Retailer 1	[X]	49%
Retailer 2	[X]	28%		Retailer 2	[X]	42%
Retailer 3	[X]	17%		Retailer 3	[X]	36%
Retailer 4	[X]	10%		Retailer 4	[X]	36%
Retailer 5	[X]	8%		Retailer 5	[X]	8%
Retailer 6	[X]	8%		Retailer 6	[X]	5%
Retailer 7	[X]	5%		Retailer 7	[X]	4%
Retailer 8	[X]	4%		Retailer 8	[X]	0%
Retailer 9	[X]	2%		Retailer 9	[X]	0%

Source: CMA analysis of data received from Nike and adidas.

9.69 We found that [X]% of [X] Nike apparel products (not shown in Table 9.2) and [X]% of its adidas products were available at [X], while [X]% of [X] Nike products and [X]% of its adidas products were available at [X]. [X] has the [X] highest overlap (ie number of identical products available) with [X] for Nike products and [X] highest overlap for adidas products. We found that [X] has the [X] highest overlap with [X] for Nike products and [X] highest overlap for adidas products. We also found that a number of other retailers have the same or higher degree of product overlap of Nike and adidas products with [X].

9.70 Of the Nike and adidas apparel products sold by JD Sports, [X] were sold by other retailers. Of the smaller number of products sold by Footasylum, [X] were sold by other retailers. However, we recognise that examining the overlap of Nike and adidas products only captures part of the Parties' offerings, given that they stock a wider range of brands and own-brands.

9.71 The Parties submitted that this type of analysis overstated the degree of overlap at a local store level. We recognise that could be the case for the in-store segment, although this does not apply to their online offerings, or where their online offerings are available in-store (eg through JD Sports' in-store

kiosks); further, the scope for overstatement would apply to all retailers assessed.

- 9.72 Overall, we provisionally find that the Parties have some similarities in their apparel offering, although there are some apparent differences when looking at branded product shares and product overlaps in isolation.
- 9.73 As discussed in paragraph 9.61, we asked third parties to rank the Parties and other retailers in terms of their closeness of competition to each other.³³⁴ We have assessed their views on rankings by examining the average scores they gave in terms of closeness of competition. The average score out of 10 given by third parties in response to the question on closeness of competition between the Parties was 7.6 (Footasylum on JD Sports) and 7.6 (JD Sports on Footasylum) for the retail supply of sports-inspired casual apparel.³³⁵ This shows that third parties view JD Sports and Footasylum as close competitors.

Other retailers

- 9.74 We have also considered the offerings of other prominent retailers of sports-inspired casual apparel. In subsequent sections we have assessed further evidence of the constraint they impose on the Parties.
- 9.75 Sports Direct is a major national retailer in the UK. It has a large number (approximately 500) of stores, [REDACTED] geographic overlap with both of the Parties and operates online. [REDACTED] and it offers a wider range of sports apparel than that of the Parties. Its brand mix differs to that of the Parties and it focuses less on own-brand. We note that for Nike and adidas products it has a [REDACTED] apparel overlap with the Parties (eg for Nike products a [REDACTED]% overlap with JD Sports and [REDACTED]% overlap with Footasylum) although this is relatively high compared to other retailers. [REDACTED]. This indicates that, despite its size, there are some important differences in Sport Direct's offering in comparison with the Parties.
- 9.76 ASOS is an online-only retailer that has been growing (it started selling sports-inspired products in 2016).³³⁶ It sells a broad range of products across the wider casual fashionwear sector, including sports-inspired casual apparel. It submitted that its target is both males and females [REDACTED]. [REDACTED]. Across both genders, it has a [REDACTED] product overlap with JD Sports ([REDACTED]%) and a [REDACTED]

³³⁴ Closeness in this context was measured on a one (not close at all) to 10 (very close) scale

³³⁵ CMA, *Phase 1 Decision*, paragraph 253 and CMA analysis of third-party questionnaires during phase 1.

³³⁶ [REDACTED].

overlap with Footasylum ([REDACTED]%). This indicates that [REDACTED], its offering has a different focus to that of the Parties.

- 9.77 There are various other online-only retailers. For example, Zalando sells a broad range of products, including sports-inspired casual apparel, and is active in a number of European markets.³³⁷ Its marketing is principally aimed at 20 to 49 year olds, and the majority of its customers are females aged 25 to 55 (55% for apparel). It has a [REDACTED] product overlap with both Parties for Nike and adidas products (eg for Nike products a [REDACTED]% overlap with JD Sports and [REDACTED]% overlap with Footasylum). This indicates [REDACTED] it is focused on a different consumer market and has a much smaller presence in the UK.
- 9.78 Amazon also sells a broad range of products, including sports-inspired casual apparel, although we note it does not currently directly supply products from Nike or adidas.³³⁸ It does not target a specific demographic. This indicates that its offering is relatively different from that of the Parties.
- 9.79 Suppliers including Nike and adidas have been growing their retail sales through their DTC channels. They both have online offerings that deliver to all parts of the UK. They both have a number of physical stores, a few of which are large flagship stores, but the majority of which are forms of factory or clearance stores which [REDACTED].³³⁹ The geographic overlap of these stores to the Parties' stores is also low.³⁴⁰ Since these suppliers are also brands themselves, they typically offer all of their own products online, and more than they make available to their retailer customers. However, as a mono-brand footwear and apparel proposition they do not offer other brands alongside these products. Overall, we consider that there are some similarities to the Parties' offerings but there are also some important differences.
- 9.80 In addition to its strong position in footwear, Foot Locker offers a range of apparel products (including by these suppliers of branded products: adidas; Nike; Jordan; Puma; Converse and Under Armour). However, apparel is a low proportion of its overall sales (around [REDACTED]%). Foot Locker's product overlap with both Parties is [REDACTED] (eg for Nike products, Foot Locker has a [REDACTED]%

³³⁷ [Zalando is active in 15 European countries and is Europe's biggest online fashion retailer.](#)

³³⁸ [REDACTED]. We also note that as reported (for example as reported by Bloomberg in November 2019), Nike announced that it's ending a pilot programme with Amazon launched in 2017, which attempted to stop counterfeit third party sellers by giving Amazon access to Nike products.

³³⁹ Nike has 42 stores in the UK, of which only five are core or flagship stores, whereas the remaining 37 are Factory Outlet stores. Nike estimated that a Factory Outlet store would stock around [REDACTED]%-[REDACTED]% of clearance products, whereas other non-outlet stores typically stock [REDACTED]% of clearance products (Where clearance products are defined as products which have become permanently discounted below RRP). adidas has 26 stores, four of which are flagship stores, three are core stores, two brand centres and the rest are Factory Outlets.

³⁴⁰ Based on a 20-minute drive-time catchment area, we calculated that [REDACTED]% of Footasylum's stores overlap with a Nike store and [REDACTED]% with an adidas store; [REDACTED]% and [REDACTED]% for JD Sports, respectively.

overlap with JD Sports and [X]% overlap with Footasylum). We have considered the extent to which it may be repositioning its apparel offering in as part of our consideration of market developments (see paragraphs 9.62 - 9.64).

- 9.81 A number of high street retailers, eg Primark, Next, River Island, Zara, and department stores eg John Lewis and Debenhams, also offer apparel products which may be substitutes for the products that the Parties sell.³⁴¹ We recognise that, as submitted by the Parties, some of their products may appear to be similar to some of the products offered by the Parties, and Footasylum in particular. However, we have placed most weight on how consumers view them as alternatives, which is shown by our surveys, our entry-exit analysis, and the Parties' views on these retailers and each other in their internal documents. We also note that these retailers did not generally see their offerings as being similar to the Parties.
- 9.82 We asked third parties (covering both competitors and suppliers) to rank other retailers in terms of their closeness of competition to each of the Parties and to other retailers, as shown in Table 9.4.

³⁴¹ [X] said that females aged 25 and above accounted for 87% of its customers, of those who purchased sports-inspired apparel. [X] and [X] said they did not compete with any other sports inspired business. [X] said that it was a fashion retailer not primarily focused on sports or performance apparel

Table 9.4: Third parties' rankings of Table x: Third parties' rankings of retailers' closeness to the Parties in apparel ^{342 343}

Retailers	Number of responses included in closeness average	Number of mentions included in closeness average	Closeness to:	
			JD Sports	Footasylum
The Parties				
JD Sports	20	-	-	7.6
Footasylum	20	-	7.6	-
Third parties				
Sports Direct	-	10	5.9	5.2
ASOS	-	10	6.0	6.1
Foot Locker	-	6	8.8	8.8
Nike	-	4	7.8	7.0
adidas	-	4	8.3	6.8
Footpatrol	-	3	6.3	6.3
Amazon	-	3	6.3	5.3
Shop Direct	-	3	6.5	6.5

Notes:-

Rankings are on a scale of 1 to 10, with 10 being the closest and 1 being the least close.

Our third party questionnaires asked third parties directly to provide a ranking of the Parties' closeness to each other. The table reports the number of third parties that responded to this question and the average ranking of closeness to each other.

Our questionnaire, also asked third parties to provide rankings for other retailers, but the identities of these other retailers were unprompted. For these retailers, the table reports the number of mentions and the reported ranking of closeness to the Parties. The number of mentions is therefore relevant to which retailers third parties considered they should raise, however closeness of competition is a more direct measure of the significance of the mentioned retailers in terms of competition. Views do not include third parties' views of their own position relative to the Parties.

Only retailers mentioned by three or more third parties are included. Footpatrol is a JD Sports' fascia.

9.83 We asked third parties to score retailers in the market in terms of closeness of competition to each of the Parties. The Parties scored highly, as did Foot Locker, Nike and adidas. However, these three retailers were all mentioned by fewer third parties than Sports Direct and ASOS, which were mentioned the most times but given lower scores than the Parties. We therefore consider that third parties view the Parties as competing closely against each other with relatively few other close constraints (eg Foot Locker, Nike and adidas), but with some other constraints from retailers such as Sports Direct and ASOS.

Provisional view on retailers' offerings

9.84 Overall, we provisionally find that the Parties have some similarities in their apparel offering. They both have a wide range of brand products and product types available. Nike and adidas account [§] JD Sports' apparel sales and

³⁴² These estimates differ from those given in the *Phase 1 decision*, paragraph 25, due to addition of further retailer rankings gathered at phase 2; CMA analysis of third-party questionnaires during phase 1 and phase 2.

³⁴³ We note that, while our question asked third parties to provide rankings for closeness in the apparel market, for two of the retailers (Foot Locker and Footpatrol) reported by third parties, footwear is a greater proportion of their sales than apparel. This may be reflective of closeness, or may have some bias from third parties' views over these retailers' closeness in footwear.

[X] of Footasylum's sales. Both Parties' have own-brands, with these being particularly important for Footasylum.

- 9.85 The relevance of similarities in offering is difficult to assess by looking at branded product shares and product overlaps in isolation. Given this we consider that the surveys of the Parties' customers, in particular, provide more meaningful evidence on consumers' view of the Parties' apparel offerings and their substitutability (see paragraphs 9.98 - 9.113).
- 9.86 There are also a number of other retailers whose offerings have some similarity to those of the Parties, in particular Sports Direct, ASOS (who only operates online), and Nike and adidas (which only offer a single brand).
- 9.87 Third parties scored the Parties as competing closely against each other with relatively few other close constraints (eg Foot Locker, Nike and adidas), but with some other constraints from retailers such as Sports Direct and ASOS. We therefore consider that third parties view the Parties as competing closely against each other with relatively few other close constraints.

Internal documents

- 9.88 We have analysed a large number of the Parties' internal documents, which, in our view, are highly informative evidence on how the Parties view the market and their competitors in the ordinary course of their business prior to the Merger.³⁴⁴

Parties' views

- 9.89 JD Sports submitted that while the Parties referenced each other in their internal documents, these documents simply reflected the respective Party's monitoring of market activities. It said that many of its documents discussed a wide range of competitors in addition to Footasylum. Further, it submitted that [X]. It also submitted that closeness of competition was not a simple function of the number of mentions in or across a given set of internal documents.

³⁴⁴ In our requests for internal documents from the Parties we generally defined internal documents as, 'Internal documents refer to documents in any form (including, but not necessarily limited to, reports, presentations, studies, internal analyses, analyst reports, industry/market reports or analysis, including customer research and pricing studies) which have been prepared by or for, or received by, any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of [either Party] (whether prepared internally or by external consultants).' The timeframes and precise definitions varied depending on each specific question, but generally covered the last two years.

Our assessment

9.90 As explained in chapter 8, we have found that references to competitor retailers in internal documents are not usually separated for footwear and apparel, nor for in-store and online, but rather cover competing retailers in general. Therefore, we consider the internal documents discussed for footwear in chapter 8 to be largely of relevance to apparel as well (see the documents referenced in paragraphs 8.100 - 8.107).

Provisional view on internal documents

9.91 The Parties submitted that references to each other in internal documents were merely part of general market monitoring and, as such, these were not an indicator of closeness of competition (see paragraph 9.88). We disagree with the Parties as we consider that such monitoring is in itself evidence of closeness of competition, since we do not consider it would be commercially rational to engage in detailed monitoring of retailers which the Parties did not consider to be competitors.

9.92 Having considered the nature and extent of the Parties' monitoring of one another and other retailers in their internal documents in the round (including our assessment set out in more detail in chapter 8), we provisionally find that such monitoring indicates a close competitive relationship between the Parties, in particular that JD Sports imposes a strong constraint on Footasylum. In this context, we note that there is evidence that, in some instances, the Parties' monitoring of each other and other retailers is likely to have influenced their strategic decisions and competitive responses (see paragraphs 8.106 - 8.107).

9.93 In particular, we provisionally find that:

- (a) Footasylum's documents, taken together, demonstrate that Footasylum sees JD Sports as its closest competitor with only Foot Locker also seen as a close competitor. However, we recognise that the documents do not distinguish between apparel and footwear, and that Foot Locker is more focused on footwear; and
- (b) JD Sports' documents, taken together, demonstrate that JD Sports sees Footasylum as a close competitor alongside Foot Locker, ASOS, Nike and adidas.

9.94 We consider that these documents show a low degree of monitoring by the Parties of a range of other competitors, including: Schuh; Office (both of whom only sell footwear and therefore do not compete in the sports-inspired casual apparel market); H&M; River Island; Next; Sports Direct; and

Topshop/Topman. It is notable that Sports Direct, which is a large retailer in the industry, is monitored so little, especially by Footasylum. More generalist retailers, including department stores, are hardly mentioned at all.

Surveys

- 9.95 The way that retailers compete in this market and the extent of their constraint on each other is influenced by consumer preferences.
- 9.96 As explained in chapter 6, we undertook two large surveys of the Parties' customers to understand their views on how they purchase the Parties' products, and what alternatives they would consider if the retailer and/or channel that they shopped in was no longer available. We have not placed full evidential weight on the online survey results due to the low response rate (see paragraph 6.26). Further detail on the surveys and their methodology is set out in Appendix E.

Parties' views

- 9.97 As set out in chapter 8, the Parties made a number of submissions on the survey questions, design and robustness of the survey results, including on the phrasing of the diversion questions. These submissions are summarised in chapter 8 and set out in more detail in Appendix E, alongside our assessment of them.

Our assessment

- 9.98 The evidence from the store exit survey is highly informative of the constraint that the Parties place on each other and the constraint from other retailers, as this information is derived from the views of the Parties' customers on which retailer is their next best alternative.
- 9.99 We have first reviewed customers' reasons for shopping with the Parties to indicate what consumers value, then their search behaviour to indicate which retailers they look at before purchase (if any) and finally their stated next best alternatives (diversion) to indicate which retailers constrain each of the Parties.

Survey results for apparel customer shopping behaviour

- 9.100 Our surveys asked the Parties' customers why they had chosen to shop with the Parties.³⁴⁵ We found that apparel customers reported a wide range of reasons, covering both price and non-price features of the Parties' offerings in both surveys.
- 9.101 Our store exit survey found that 19% of Footasylum's apparel customers and 10% of JD Sports' apparel customers mentioned 'good prices' as the main reason to shop there.³⁴⁶ Our online survey suggests that price is the most important factor for just over half (56%) of Footasylum's apparel customers and over two-fifths (44%) of JD Sports' apparel customers when choosing to shop on either Party's website.
- 9.102 Both in-store and online apparel customers also find quality and service to be of value. Indeed, more JD Sports in-store apparel customers stated that their main reason to shop at JD Sports had to do with quality rather than its prices.³⁴⁷
- 9.103 Product range is also important to the Parties' customers. When asked about the main reason that led them to buy at Footasylum, 39% of in-store apparel customers stated reasons associated with a good product range (eg good range of branded products, wide range of products, products that other stores do not have).³⁴⁸ The percentage is similar for JD Sports' in-store customers (43%). For online customers, good product range is mentioned by around two-thirds of respondents as the main reason why they had shopped at either JD Sports (65%) or Footasylum (66%).³⁴⁹
- 9.104 Our store exit survey asked apparel customers what actions they had taken before visiting the JD Sports or Footasylum store where they made their purchase. A sizeable minority of apparel customers had looked at another physical store (14% of JD Sports' customers and 32% of Footasylum's customers) and a few (5% JD Sports; 10% Footasylum) had looked at other retailer websites. Of those customers that had looked elsewhere, the most

³⁴⁵ In the case of the store exit survey, respondents were not prompted in any way, while for the online survey respondents were presented with a comprehensive list.

³⁴⁶ CMA analysis of DJS Store Exit survey. See: [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#)

³⁴⁷ CMA analysis of DJS Store Exit survey. See: [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#)

³⁴⁸ CMA analysis of DJS Store Exit survey. See: [DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#)

³⁴⁹ [DJS Research, Survey of online retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#).

common location was with the other Merging Party, followed by Sports Direct (in-store) and Foot Locker (online).³⁵⁰

9.105 Overall, the Parties' customers gave a range of price and non-price elements of the Parties' offering as the main reason why they shopped with the Parties. This is consistent with consumers valuing elements of QRS as well as price.

9.106 Just under a quarter of JD Sports' in-store apparel customers and just under half of Footasylum's in-store apparel customers had looked at the offering of other retailers before making their purchase decision and most commonly this comparison was made with the other Party.

*Survey results for apparel customer diversion behaviour*³⁵¹

9.107 Our store exit survey asked customers what they would do if all the stores of the Party that they had shopped at were closed. Similarly, our online survey asked customers what they would have done if the Party they had shopped at had stopped selling online.³⁵²

9.108 The responses to these questions give an indication of which other retailers customers view as alternatives to the Parties. Nationally representative diversion ratios to retailers receiving more than 2% of total diversion (across both channels) are shown in Table 9.5.³⁵³

³⁵⁰ Of the Footasylum customers that had looked elsewhere 70% of those that had looked at other websites had looked at JD Sports and 28% at Foot Locker and 77% of those that had looked at other physical stores had looked at JD Sports and 19% at Foot Locker. Of the JD Sports customers that had looked elsewhere 40% of those that had looked at other websites had looked at Footasylum 28% of Foot Locker and 42% of those that had looked at other physical stores had looked at Footasylum and 23% at Foot Locker.

³⁵¹ Estimates of diversion reported in this section have been weighted to make them nationally representative of the Parties' entire store estate. This is different to the unweighted diversion tables in the DJS exit survey report ([DJS Research, Exit survey for retail customers for a merger inquiry: JD Sports and Footasylum, January 2020](#)).

³⁵² Those customers whose first choice would have been to divert to JD Sports' own online channel, were asked for their next best alternative after this and are instead reported under this next best alternative (this is what we refer to as excluding own-party diversion).

³⁵³ We note that although our store exit survey was designed to provide national estimates of diversion, we have also examined some store level results. We looked at whether there was any apparent material difference in diversion between the Parties depending on the presence of other specific retailers. We found that diversion between the Parties in overlap areas where both Nike and adidas were present broadly exhibited the same pattern across stores as between other stores where only one or neither of them were present. Further, we assessed whether diversion was different in overlap areas where Sports Direct had an elevated store (Thurrock, Denton, Dudley and Leicester). Again, we found that the levels of diversion between the Parties in these areas appeared to be broadly in-line with at other stores.

Table 9.5: Apparel diversion ratios from JD Sports to Footasylum and third-parties (with no spend-weighting, excluding own-party diversion)

%						
JD Sports to Footasylum						
Retailer	In-store customers			Online customers		
	<i>In-store to any channel</i>	<i>In-store to in-store</i>	<i>In-store to online</i>	<i>Online to any channel</i>	<i>Online to online</i>	<i>Online to in-store</i>
Footasylum	17	13	4	13	9	4
Sports Direct	17	15	2	12	8	3
Nike	8	4	4	14	9	6
Foot Locker	8	6	2	5	2	3
adidas	7	4	3	9	7	2
DW Sports	4	3	1			
ASOS				10	10	
Amazon				7	7	
Next				2	2	
M and M				2	2	
Other third party	21	13	8	10	4	5
Not shop	16			15		

Source: CMA calculations based on DJS surveys.

Note: The tables show diversion ratios from JD Sports to other retailers from the store exit survey and the online survey. As explained in paragraph 6.26, we did not give the results of the online survey full evidential weight. The tables only include parties for which the level of diversion exceeds 2%.

The 'Other third party' or 'Not shop' category includes a long tail of retailers with lower diversion ratios (for the column in question) including, as applicable, retailers such as: TK Maxx, Debenhams, House of Fraser and River Island.

If a retailer is included as a row in the table but a cell is empty this means that the diversion ratio was less than 2% for the column in question, in these columns the retailer may be present in the other third party figure.

The store exit survey, in particular, was designed primarily to estimate diversion between the two Parties; as such the level of sampling error is larger for third parties. The implication of this is that while the estimates for third parties are unbiased the margin of error is larger.

9.109 JD Sports' in-store customers are most likely to divert to Footasylum and Sports Direct to make their apparel purchases.³⁵⁴ Other than Footasylum and Sports Direct, Nike, Foot Locker, adidas and D W Sports have diversion above 2%. About a fifth (21%) of customers would have gone to one of a number of other retailers and 16% would not have shopped at all. While the majority of diversion is to in-store, 24% would have diverted online. Diversion from in-store to online shows a similar pattern in terms of the retailers listed and the relative size of diversion to these retailers as for in-store to in-store diversion.

9.110 JD Sports' online customers are most likely to divert to Nike (14%). Other than Nike, Footasylum (13%), Sports Direct (12%) and ASOS (10%) are the most popular destinations. Other retailers with diversion above 2% are: Foot Locker; adidas; Amazon; Next; and M and M. One tenth (10%) of customers would have gone to a number of other retailers and 15% would not have shopped at all. While the majority of diversion is online, 23% would have diverted in-store. Diversion from online to in-store shows a similar pattern

³⁵⁴ Those customers whose first choice would have been to divert to JD Sports' own online channel, were asked for their next best alternative after this and are instead reported under this next best alternative (this is what we refer to as excluding own-party diversion).

across retailers as for online to online diversion, the main difference being that those retailers that do not have an in-store presence are not included.

9.111 Table 9.6 shows the diversion ratios from Footasylum to other retailers for its apparel customers.

Table 9.6: Apparel diversion ratios from Footasylum to JD Sports and third-parties (with no spend-weighting, excluding own-party diversion)

							%
Retailer	Footasylum to JD Sports						
	In-store customers			Online customers			
	In-store to any channel	In-store to in-store	In-store to online	Online to any channel	Online to online	Online to in-store	
JD Sports	69	57	13	61	40	21	
Foot Locker	3	2	1	5	3	2	
ASOS				8	8		
Nike				4	2	1	
Other third party	15	9	6	13	9	4	
Not shop	13			10			

Source: CMA calculations based on DJS surveys.

Note: The tables show diversion ratios from Footasylum to other retailers from the store exit survey and the online survey. As explained in paragraph 6.26, we did not give the results of the online survey full evidential weight. The tables only include parties for which the level of diversion exceeds 2%.

The 'Other third party' or 'Not shop' category includes a long tail of retailers with lower diversion ratios (for the column in question) including, as applicable, retailers such as: TK Maxx, Debenhams, House of Fraser and River Island.

If a retailer is included as a row in the table but a cell is empty this means that the diversion ratio was less than 2% for the column in question, in these columns the retailer may be present in the other third party figure.

The in-store survey, in particular, was designed primarily to estimate diversion between the two Parties; as such the level of sampling error is larger for third parties. The implication of this is that while the estimates for third parties are unbiased the margin of error is larger.

9.112 Footasylum's in-store customers are by far most likely to divert to JD Sports to make their apparel purchases. Other than JD Sports, only Foot Locker has diversion above 2%; 15% of customers would have gone to one of a number of other retailers and 13% would not have shopped at all. While the majority of diversion is to in-store, 20% would have diverted online.

9.113 Footasylum's online customers are by far most likely to divert to JD Sports. Other than JD Sports, only Foot Locker, ASOS and Nike have diversion above 2%; 13% of customers would have gone to a number of other retailers and 10% would not have shopped at all. While the majority of diversion is online, 27% would have diverted in-store. Diversion from online to in-store shows a similar pattern across retailers as for online to online diversion, the main difference being that those retailers that do not have an in-store presence are not included.

Provisional view on apparel customer diversion

- 9.114 In both the exit survey and the online survey, substantially more Footasylum customers would divert to JD Sports than any other retailer. This shows that Footasylum's apparel customers view JD Sports as their closest substitute.
- 9.115 JD Sports' in-store apparel customers stated that their next best alternatives are Footasylum or Sports Direct. For JD Sports' online apparel customers Nike, Footasylum and Sports Direct are seen as the next best alternatives with diversion ratios of 14%, 13% and 12% respectively. This shows that JD Sports' apparel customers view Footasylum as one of a small number of close substitutes.
- 9.116 Diversion to JD Sports for in-store Footasylum apparel customers was substantially higher (66 percentage points) than the next best alternative (Foot Locker), whereas diversion to Footasylum for in-store JD Sports apparel customers was the same as Sports Direct (17%) and nine percentage points higher than the next best alternatives of Nike and Foot Locker. A similar pattern emerges from the results of the online survey.
- 9.117 This evidence shows that the Parties are one of the closest substitutes to each other (along with Sports Direct for JD Sports' in-store customers and Nike for JD Sports' online customers) and therefore exert a strong constraint on each other. The constraint that JD Sports imposes on Footasylum is larger than vice versa.

GUPPIs

- 9.118 As explained in chapter 6, the GUPPI is a commonly used metric designed to indicate the upward pricing incentive for merging parties post-merger (the same incentive applies to deterioration of QRS as to increasing prices). The rationale underpinning the GUPPI is that it is less costly for either of the merging parties to worsen its offering post-merger as it will recoup the profit on recaptured sales from those customers that purchase products from the other merging party. GUPPIs are calculated by combining diversion ratios and profit margin information (see Appendix F for more detail). The CMA has used GUPPIs in a number of merger inquiries.³⁵⁵ An illustrative example showing the logic underpinning the GUPPI and further discussion of the GUPPI has been provided in chapter 8.

³⁵⁵ Examples of where GUPPIs were used include: [Ladbrokes/Coral merger inquiry](#) (2016), [Cineworld/City Screen merger inquiry](#) (2013) and [Sainsbury's/Asda merger inquiry](#) (2019).

Parties' views

9.119 As set out in chapter 8, the Parties made submissions regarding the use of GUPPIs. These submissions were not specific to apparel and have therefore been accounted for in the same way as described for footwear in chapter 8 – see paragraphs 8.142 and 8.143 (see also Appendix F). The Parties submitted that the GUPPIs were not probative of an ability to worsen PQRS due to the specific market dynamics from both a demand and supply-side.

Our assessment

9.120 Our GUPPI estimates for apparel are set out in Table 9.7. We have tested the robustness of these GUPPI figures with respect to a range of factors, outlined in detail in Appendix F.³⁵⁶

Table 9.7: GUPPI estimates – apparel (%)

Market segment		%
	JD Sports *	Footasylum†
In-store	[4-7]	[19-27]
Online	[3-5]	[14-21]
Combined	[4-7]	[18-25]

Source: CMA calculations based on DJS surveys and CMA variable margin estimates. The ranges presented represents the CMA's ranging of the margin for the purposes of publication.

* These GUPPIs are calculated on the basis of diversion from JD Sports to Footasylum and Footasylum's variable margins.

† These GUPPIs are calculated on the basis of diversion from Footasylum to JD Sports and JD Sports' variable margins.

Note: Combined estimates calculated on the basis of weighted in-store and online diversion (based on 2018 proportions of the Parties' in-store and online revenues) and the relevant margins.

9.121 The GUPPI figures are high, particularly for Footasylum but also for JD Sports.³⁵⁷ In the in-store segment of the market we have estimated GUPPIs of [19-27%] for Footasylum and [4-7%] for JD Sports. We did not place full evidential weight on the online GUPPIs or the combined GUPPIs as they have both been derived using the online survey results (see chapter 6) but note that, although lower than the GUPPIs in-store, they still indicate a strong incentive to increase prices (or to worsen other aspects of QRS) for both JD Sports and Footasylum. The asymmetry of the GUPPIs between Footasylum and JD Sports is consistent with other evidence we have reviewed, including the Parties' internal documents.

³⁵⁶ If we focused on price or range marginal consumers, estimated diversion ratios allowing consumers to select other fasciae belonging to the Parties, using spend-weighted diversion ratios or the Parties' submitted variable margins, the impact on the estimated GUPPI would not be sufficient to change our overall conclusion.

³⁵⁷ We have not set a specific GUPPI threshold above which a SLC would arise in our national level assessment of this Merger. A threshold is sometimes necessary in the context of using a decision rule to identify local SLCs, where there are too many local areas to assess individually, but is not necessary in this case given our national assessment.

Provisional view on GUPPIs

- 9.122 As noted in paragraph 9.117, the diversion ratios from the surveys indicate that the Parties are one of the closest alternatives for their customers (along with Sports Direct for JD Sports' in-store customers and Nike for JD Sports' online customers), which means that if either of the Parties were to deteriorate their PQRS, a sizeable proportion of their customers would divert to the other Party. Post-Merger these customers would continue to purchase from the Merged Entity. When combined with estimates of the Parties' variable margins, this results in high in-store GUPPIs, particularly for Footasylum.
- 9.123 In the in-store segment of the market we have 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 presented elsewhere in this chapter, for example the Parties' own internal documents. Although the online and combined GUPPIs are lower than the in-store GUPPIs, they still indicate a strong incentive to deteriorate PQRS through raising prices or worsening elements of QRS.

Entry-exit analysis

- 9.124 One way to assess the strength of the competitive constraint from a given retailer on the Parties is to assess the impact on the Parties of that retailer's stores opening or closing in the relevant catchment area — an 'entry-exit analysis'. We have explained the details of our analysis in chapter 8 and further detail on our results, methodology and response to the Parties' submissions is set out in Appendix C, as well as below.

Parties' views

- 9.125 As set out in chapter 8, the Parties submitted that the results of the entry-exit analysis showed that a number of other retailers impacted JD Sports' in-store revenue to a [X] as estimated for Footasylum. In apparel, the Parties submitted that this included retailers such as [X] in certain specifications of the model.
- 9.126 The Parties stated that the CMA's analysis was retrospective and did not reflect:
- (a) the prospective competitive landscape;
 - (b) the weakened position of Footasylum in the counterfactual; and
 - (c) the impact of Sports Direct's elevation.

9.127 The Parties also noted that some coefficients in the estimated entry-exit models were positive and statistically significant or were otherwise counterintuitive (ie an effect of entry by Clarks and Deichmann on apparel revenue when they only stock footwear). The Parties stated that these results suggested a degree of misspecification in the models and limited the weight that the CMA should place on the results.

9.128 We have considered these points below and in detail in Appendix C.

Our assessment

9.129 We have examined the impact of store openings and closures by different retailers on JD Sports, looking at the impact on its store revenue alongside a number of other aspects of JD Sports' offer.

9.130 The impact on revenue provides an indication of the extent to which that retailer competes with JD Sports (see chapter 8 and Appendix C for more detail).

9.131 As described in chapter 8, the analysis is retrospective and there is the potential for upward bias. However, we consider that entry-exit analysis remains informative of the relative constraint exerted by different retailers, particularly when the analysis is considered in the context of other evidence.

9.132 As explained in chapter 8, we have analysed 'store entry' ie other retailers' opening of stores in areas where JD Sports is present regardless of whether the retailer has an existing store in the area, and we have also analysed 'retailer entry' where the retailer does not have an existing store already in the area. The latter analysis is important as the impact of entry may be less if the retailer already has a store in an area, which may underestimate the closeness of competition between the two retailers.

9.133 The data used in the analysis covers 2014 to 2019 and as noted in chapter 8, it was only possible to perform the analysis for JD Sports. The analysis estimates an average effect of entry or exit by different retailers across all JD Sports stores on apparel revenue across all time periods post-entry (or exit). We have tested for robustness by first adjusting for store and time-specific factors and then additionally for region-specific factors that vary over time, as described in chapter 8.

Results – impact on revenue

9.134 We have shown below our statistically significant and negative results only, noting that for some retailers the results were significant for some measures of entry or specifications but not others.

9.135 Store entry³⁵⁸ by the following retailers was found to have a statistically significant and negative impact on apparel revenue in the local JD Sports store:³⁵⁹

(a) Nike ([]%).^{360, 361}

9.136 Retailer entry³⁶² by the following retailers was found to have a statistically significant and negative impact on apparel revenue in the local JD Sports store:

(a) Footasylum ([]%);³⁶³

(b) Foot Locker ([]%);³⁶⁴ and

(c) Clarks ([]%); this estimate ceased to be statistically significant when region-specific factors that vary over time were accounted for and is therefore given limited weight.

9.137 The entry-exit results indicate that Footasylum is a competitive constraint on JD Sports when it comes to sports-inspired casual apparel. Retailer entry by Footasylum is found to affect JD Sports' apparel revenues. Store entry by Nike and retailer entry by Foot Locker and Clarks is also found to reduce the revenue from apparel at the local JD Sports store.

9.138 On the face of it, the results for Foot Locker and Clarks are counter-intuitive given that both of these retailers focus on footwear rather than apparel. In the case of Clarks, the estimated effect is not robust to estimation accounting for region-specific factors that vary over time and so we placed limited weight on this result. For Foot Locker, there are possible explanations for such an impact, including that its footwear offering might lead to some consumers who buy both footwear and apparel visiting Foot Locker rather than JD Sports,

³⁵⁸ Measured by an increase in the number of existing stores belonging to a given retailer in a given area by one.

³⁵⁹ The average JD Sports weekly store revenue over the period in question is £[], of this, £[] was attributable to footwear and £[] to apparel.

³⁶⁰ [].

³⁶¹ No statistically significant impact was observed for Footasylum in the base specification, however, when region-specific factors that varied over time were accounted for a statistically significant and negative impact of []% was found.

³⁶² Measured by an increase in the number of stores belonging to a given retailer from zero to one or more.

³⁶³ [].

³⁶⁴ [].

although we note that the proportion of consumers who purchase both footwear and apparel in one trip is small (as found in our surveys). Furthermore, while its range of apparel is not as wide as the Parties', many Foot Locker stores do stock apparel (albeit it is a small proportion of its overall offering).

- 9.139 The entry-exit results indicate that while there is a smaller proportion of apparel sold at Foot Locker stores, the apparel that is stocked is considered by consumers to be a substitute to the apparel available in JD Sports. This is consistent with the survey evidence whereby 8% of JD Sports in-store customers stated that they would divert to Foot Locker for the purchase of apparel (which is just under half of the proportion of JD Sports customers who said they would divert to Footasylum - 17%).
- 9.140 In addition to our analysis of the impact on apparel revenues, our analysis of the impact on the proportion of products sold at full price and time since store refurbishment (as set out in 8.171 to 8.174) also apply to apparel. Store and retailer entry by Footasylum was found to affect the proportion of (all) products sold at full price, although this result is small in magnitude and not robust to the use of a specification which controlled for region-specific factors that vary over time.³⁶⁵ Store entry by Footasylum and retailer entry by Next is found to have an impact on the time since JD Sports store refurbishment. However, only the result for Footasylum is robust to the use of a model which accounted for region-specific factors that vary over time. These results indicate that Footasylum exerts a competitive constraint on JD Sports and is a close competitor.

Provisional view on entry-exit analysis

- 9.141 Looking at the entry-exit analysis in the round, Footasylum is the only retailer that has a negative impact on JD Sports in at least one of the analytical approaches across all three variations of entry-exit analysis, ie an effect on revenue, the proportion of products sold at full price and the number of years since last refurbishment. This indicates that Footasylum is a close competitor to JD Sports and exerts a constraint on JD Sports. The evidence for the impact of Footasylum on apparel revenue is slightly less strong than that for footwear revenue, since only retailer entry is associated with a statistically significant decrease in apparel revenue. We note that this is the largest estimate in magnitude that is robust to the use of a model which accounts for region-specific factors that vary over time.

³⁶⁵ Schuh was also found to have an effect as these results are not apparel-specific. However, we have not considered this in our assessment of the sports-inspired casual apparel market.

9.142 We also note that entry by Foot Locker and Nike was also found to have an impact on JD Sports' revenue, indicating that they impose some constraint.

Overview of current competitive constraints

9.143 We have reviewed a wide range of evidence on the nature of retailers' offerings and third parties' rankings of competitive closeness, internal documents, our surveys and our entry-exit analysis, in assessing the current constraints on competition.

Parties' views

9.144 JD Sports submitted that the 'assessment [of apparel] is best split into three brand-based categories' (own-label and Bedroom Brands,³⁶⁶ sports-heritage brands,³⁶⁷ and other brands).³⁶⁸ It said that the Parties could not be close competitors across all three of these categories to result in a likely unilateral effects SLC if they were not particularly close competitors in any of the three categories.³⁶⁹ Further, it submitted that the Parties were differentiated and each faced an array of closer third party competitors in each category than in aggregate, which dwarfed the relatively marginal role they played against each other as competitors in apparel.

9.145 JD Sports submitted that the Parties faced a wide range of competitors with established and well known own-brand ranges, including other fashion retailers such as Next, River Island and Topshop/Topman and online-only retailers such as ASOS, Boohoo, Pretty Little Thing and Amazon, in addition to selling branded products. It submitted that this strength of competition would not be impacted by the Merger.

Third parties' views

9.146 We received submissions from a number of third parties,³⁷⁰ most of whom considered that the Parties competed closely in apparel and there were few other close constraints on the Parties both currently and post-Merger.

³⁶⁶ A term used by the Parties to describe emerging fashion brands that start life in their founders' bedrooms (ie are founded by individual entrepreneurs).

³⁶⁷ [REDACTED]

³⁶⁸ JD Sports', *Initial Phase 2 Submission*, paragraph 95.

³⁶⁹ JD Sports', *Initial Phase 2 Submission*, paragraph 96.

³⁷⁰ We note that JD Sports submitted that 'As in all cases where there are complainants with commercial incentives to frustrate a deal there will be a question of how much weight should be given to their views about the effect of a merger (as opposed to other grievances) and a need to ensure their submissions are supported with evidence.' As in any inquiry, we have given due regard to a range of factors including: the incentives of the party

Competition between the Parties

9.147 As discussed in chapter 8, we asked third parties to rank the Parties in terms of their closeness of competition to each other.³⁷¹ Overall, third parties indicated that the Parties competed closely against each other in apparel (see paragraphs 9.82 - 9.83 where we explore this further), although slightly less closely than for footwear.

9.148 Across both footwear and apparel, several retailers submitted that the Merger would decrease competition and expressed general concerns about the Merger (see paragraph 8.186). Several retailers submitted that: the Merger would decrease competition in footwear and apparel; increase the leverage that the Merged Entity would have over suppliers; and enable the Merged Entity to have better access to branded products, sub-brands, franchises and models that were most desired and in demand by consumers, but which would be unavailable to other retailers.

Constraints from other retailers

9.149 We asked third party retailers to rank other retailers in terms of their closeness of competition in apparel to each of the Parties. Based on these rankings, Sports Direct and ASOS were most frequently mentioned as competitors.³⁷² In terms of closeness of competition, adidas, Nike and Foot Locker were mentioned as the closest to the Parties, at a level similar to the closeness between the Parties themselves (see paragraphs 9.82 and 9.83).³⁷³

9.150 A number of third party retailers separately submitted views as to whether or not they saw themselves as competitors to the Parties, for example:

- (a) [REDACTED] submitted that it was a fashion retailer not primarily focused on sports or performance apparel, and that it did not see itself as directly competing with the Parties;
- (b) [REDACTED] submitted that it did not compete with the Parties;
- (c) [REDACTED] submitted that it did not view itself as a competitor of Footasylum or JD Sports, stating:

giving that evidence; the extent to which the party had knowledge that was relevant to the statutory questions we are required to answer; and the extent to which the evidence was corroborated by other evidence available to us.

³⁷¹ Closeness in this context was measured on a one (not close at all) to 10 (very close) scale.

³⁷² CMA analysis of third party questionnaires during phase 1.

³⁷³ We note that there may be some bias in the reported rankings by third parties as both footwear and apparel were considered in the same questionnaire, albeit each was considered separately.

We fundamentally believe [X] not to compete directly with either of JD Sports, Foot Asylum [sic], or any other sports inspired business. We are a fashion retailer that offers casual clothing in addition to smarter products.

- (d) [X] submitted that it considered JD Sports to be a competitor, stating that it 'also sells direct to consumers in competition with JD Sports. Approximately, [X]% of all [X]lines sold directly are also sold by JD.' Regarding Footasylum, [X] submitted it was 'Not really/theoretical competitor as Footasylum does not retail [X] products in competition to [X] own stores'.

Our assessment

- 9.151 For JD Sports, while it is a larger retailer than Footasylum, we have found its offering has some similarities to Footasylum, internal documents demonstrate that JD Sports sees Footasylum as a close competitor, their customers state that Footasylum is their next best alternative (as well as some other retailers), the opening of Footasylum stores affects nearby JD Sports store revenues and third parties ranked Footasylum highly as a close competitor.
- 9.152 For Footasylum, although it is a smaller retailer, we found its offering has some similarities with JD Sports, internal documents demonstrate that Footasylum sees JD Sports as its closest competitor, its customers are by far most likely to divert to JD Sports and third parties considered it to compete closely with JD Sports.
- 9.153 Taken together the evidence shows that the Parties are close competitors, with JD Sports providing a stronger constraint on Footasylum than vice versa. Our GUPPI estimates are high, particularly for Footasylum, showing a strong incentive to degrade PQRS across the Parties' sports-inspired casual apparel offerings post-Merger.
- 9.154 We have considered the current constraints from other retailers on both of the Parties, based on the same evidence. This shows that no other retailers exert a strong constraint on the Parties. Other retailers such as Sports Direct and Nike (particularly online) impose some constraint but none more so than either of the Parties.
- 9.155 Our store exit survey shows that Sports Direct exerts a constraint on JD Sports that is comparable with Footasylum, but a much weaker constraint on Footasylum than JD Sports. However, Sports Direct's offering is different in some respects to the Parties. There is some monitoring by the Parties of Sports Direct in their internal documents, but this is to a much lesser extent

than other competitors and much less than each other. Taking this evidence in the round, we provisionally find that while Sports Direct exerts some constraint on JD Sports, this is less than that imposed by Footasylum and it is a far weaker constraint on Footasylum than JD Sports.

- 9.156 Similarly, Nike's DTC offering has some impact on the Parties. We found that it was monitored by both of the Parties in their internal documents. Our entry-exit analysis indicates that the entry of Nike stores has an impact on the apparel revenue of JD Sports stores. However, our store exit survey shows that while it exerts some constraint on JD Sports, it is a weak constraint on Footasylum. The online survey suggests Nike may be a closer competitor to JD Sports' online customers than for in-store customers, but a weaker constraint on Footasylum. On this basis we provisionally find that Nike exerts some constraint on the Parties (particularly online), but less than each does on the other.
- 9.157 Foot Locker is viewed by third parties as being a close competitor to the Parties and our entry-exit analysis also indicates that the entry of new Foot Locker stores has an impact on the apparel revenue of local JD Sports stores. Internal documents also show that the Parties closely monitor Foot Locker, although these documents do not distinguish between footwear and apparel. However, Foot Locker has a much smaller proportion of apparel in its offering than it does footwear. Our store exit survey shows that it exerts only some constraint on JD Sports, much less than Footasylum; and a weak constraint on Footasylum. These findings are consistent with those of our online survey. Taking this evidence in the round, we provisionally find that Footlocker has some constraint on the Parties but not as strong as each other.
- 9.158 The Parties also monitor ASOS (which is online-only) and third parties viewed ASOS as exerting some constraint on the Parties. Our online survey suggests it exerts some constraint on the Parties, particularly JD Sports. However, our store exit survey shows that ASOS is a very weak constraint on both JD Sports and Footasylum. On this basis, we provisionally find that ASOS exerts some constraint on the Parties' online offerings but a weak constraint on their in-store offerings, therefore it is not as strong as that imposed by each Party on the other.
- 9.159 While numerous other retailers offer sports-inspired casual apparel, taken in the round, the same evidence indicates that their constraint on the Parties is only moderate at best.
- 9.160 We have found that adidas's DTC offering is a weaker constraint than Nike's. It is monitored by both Parties in their internal documents. Our store exit survey shows that it exerts some constraint on JD Sports but much less so

than Footasylum, and we did not find evidence of a constraint from adidas in our entry/exit analysis.

- 9.161 Amazon rarely features in the Parties' internal documents. Our online survey suggests that Amazon exerts some constraint on JD Sports but is a weak constraint on Footasylum. Our store exit survey shows Amazon is a very weak constraint on the Parties. Few third parties mentioned Amazon as a constraint on the Parties. On this basis, we provisionally find that Amazon exerts a very weak constraint on the Parties.
- 9.162 There are a large number of other apparel retailers that sell sports-inspired or other types of casual apparel eg Next, Topshop/Topman, River Island, Primark etc but, with the exception of Next, these retailers do not sell similar branded products to either of the Parties and Next only sells these online. The evidence from the surveys, internal documents and third party views indicate that, in contrast to the Parties' views, these general high street retailers are not strong constraints on the Parties. In support of this, none of these retailers considered themselves to be competitors to either of the Parties.
- 9.163 Based on our assessment of the constraint from the Parties on each other and the current constraint exerted by existing retailers, we provisionally find 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 will not be sufficient to prevent an SLC.
- 9.164 We recognise that this is a dynamic market and therefore in addition to evidence illustrating current constraints on the Parties, it is also important to consider the impact of future market developments on the competitive constraints on the Merged Entity.

Market developments

- 9.165 Our Guidance states that changes to market conditions in the foreseeable future will often be assessed as part of our competitive assessment.³⁷⁴ In chapter 8 we have assessed whether there are any changes underway or likely to happen in the foreseeable future (ie the next few years) that may materially change the nature of the existing constraints on the Parties. We have focused our assessment on retailers already present in the market and considered any repositioning or significant expansion. We have separately assessed new market entry, including entry from adjacent markets, when we have considered countervailing factors (see chapter 11). The discussion of

³⁷⁴ CMA, [Merger Assessment Guidelines](#), September 2010, paragraph 4.3.2.

market developments in chapter 8 largely applies equally to apparel and footwear and is summarised below. We have expanded on any specific evidence related to apparel rather than footwear.

Parties' views

9.166 As set out in chapter 8, the Parties made a number of submissions that applied to both the footwear and apparel markets, which we have summarise here (set out in detail in paragraph 8.206 - 8.208). The Parties submitted that:

- (a) the sector in which they operated 'is subject to substantial disruptive expansion and repositioning by rivals' and cited a number of factors as evidence that 'many' rivals were disruptively expanding and repositioning themselves;
- (b) they also faced the threat of 'potential brand-sponsored entry' and that suppliers 'can and do sponsor entry into the market when the incumbent retailers are under-performing'. (We have considered potential supplier-sponsored entry as part of our assessment of countervailing factors in chapter 11); and
- (c) this expansion and repositioning of other retailers would be 'large relative to the scale of Footasylum, meaning that the constraint from Footasylum on JD Sports would be replaced, several times over, by new constraints'.

9.167 In relation to apparel, JD Sports submitted that Foot Locker was shifting toward a more active and aggressive store expansion programme which included stocking more apparel products in its larger 'power stores' which it considered Footlocker was opening more of in the UK.

Third parties' views

9.168 As set out in chapter 8, third parties who commented on market developments - such as [X] - highlighted suppliers' role in the footwear and apparel markets, which they submitted was changing in relation to suppliers' DTC offer (set out in detail in paragraph 8.209).

Our assessment

9.169 In this section, we have focused our assessment on changes in retailers who are already present in the market repositioning or expanding their offer. In particular, we have considered Frasers Group, DTC growth and multi-brand retailers' growth including Foot Locker.

Changes in retailers' positioning

9.170 Since sports-inspired casual apparel is trend driven, retailers of such products may reposition themselves in terms of what they stock, the fascia under which they trade, the branding that they use, the branding of a given fascia, marketing and the consumers which they target. If a given retailer were to change some or all of these elements of its offering, this could change the extent of the constraint that it exerts on the Parties in the foreseeable future. Such a change would not be captured by the retrospective nature of some of the evidence we have considered, such as our entry-exit analysis and the surveys. However, some internal documents may capture the Parties' views about market developments, and we have referred to these in our assessment.

9.171 We have summarised our assessment here, as set out in chapter 8, expanding on specific evidence related to apparel.

Frasers Group

9.172 As explained in chapter 8, Frasers Group is undertaking an elevation strategy to improve the quality of its stores and digital offer to elevate the perception of the Sports Direct fascia and the wider Frasers Group.

9.173 Our assessment of this strategy (see paragraph 8.212 - 8.241) mostly applies to apparel as well, so we have not repeated this here.

9.174 For the reasons set out above in the 'role of suppliers' section, we provisionally find that, in general, restrictions on the supply of branded apparel are less significant than for footwear (see paragraph 9.13). [REDACTED]:

(a) [REDACTED]; and

(b) [REDACTED]. As noted in chapter 8, [REDACTED].

Provisional view on changes in retailers' positioning

9.175 We consider that the scope for Frasers Group's elevation strategy to significantly change the constraint that its Sports Direct and USC fascia exert on the Parties is more limited in apparel than in footwear. This is due to the fact that a greater proportion of apparel sales come from a wide range of suppliers of branded products other than Nike and adidas (who are generally less restrictive) (for further detail see paragraphs 9.15 to 9.21).

9.176 Our provisional view is that, on the basis of the evidence available, we cannot conclude with sufficient certainty that Frasers Group's elevation strategy will

significantly change the strength of the competitive constraint on the Parties from Sports Direct in the market for the retail supply of sports-inspired casual apparel in the foreseeable future.

Retailer growth

DTC

9.177 As discussed in chapter 2, the key suppliers in the market (Nike and adidas) offer their branded products to consumers through two channels - their wholesale offering to retailers and their own DTC retail offering.

9.178 Our analysis set out earlier in this chapter and in chapter 8 (including our review of internal documents, our surveys and our entry-exit analysis) has taken account of the constraint the DTC channel currently has on the Parties.³⁷⁵ However, we recognise that as the market develops, there is the potential for the competitive constraint exerted by the suppliers' DTC offering to increase.

9.179 Nike and adidas are the two most important suppliers in the sports-inspired casual apparel market, though significantly less so than in footwear, and we have therefore focused our assessment of DTC growth on these suppliers. Since the majority of the analysis of DTC applies equally to footwear and apparel, the discussion of DTC growth, where relevant to both footwear and apparel, is set out in chapter 8.

- *Recent growth*

9.180 Nike's DTC apparel sales grew [X] with its wholesale business. The share of sales generated through its DTC channel increased by [X] percentage points between September 2014 and September 2019 to reach [X]% of its total UK sales. [X] adidas's DTC apparel sales in the UK [X].³⁷⁶

9.181 We consider that the data shows that wholesale remains the dominant channel through which revenue is generated for both Nike and adidas in the sports-inspired casual apparel market.

³⁷⁵ Although we note that the entry-exit analysis does not capture the role of online constraints.

³⁷⁶ CMA analysis of data provided by Nike and adidas.

- *Future growth*

9.182 As set out in chapter 8, the key suppliers have made public statements about their future strategy and desire to grow their DTC offering, primarily online.³⁷⁷ We have asked about their future plans and collected internal strategy documents in order to understand how their UK DTC sales are likely to evolve in the foreseeable future.

9.183 Both Nike and adidas forecast that their DTC channel will increase in size, as explained in further detail in chapter 8. [redacted] their wholesale business is set to grow at [redacted].

9.184 We also asked the key suppliers how they anticipated achieving their projected DTC growth. In response:

(a) in addition to the factors mentioned in paragraph 8.257, [redacted]; and

(b) [redacted].

Provisional view on DTC growth

9.185 In our view based on the evidence set out above taken in round, we consider that Nike's and adidas's DTC sales are likely to grow at a significant rate globally. On that same basis, we consider that it is likely that their DTC offer will continue to grow strongly in the UK, but predominantly online. In particular, there is evidence which indicates that such growth is likely reflective of general growth in the market and that the ratio of DTC sales to wholesale sales will not change significantly in the foreseeable future.

9.186 Nike and adidas's DTC offer is currently present in both the in-store and online segments of the market. In our view, based on the evidence available, we consider that the growth in Nike's and adidas' DTC sales is likely to be focused toward the online segment. We also note that the initiatives that they described to enable them to achieve their DTC growth do not appear to amount to a substantial repositioning of their offer.

9.187 On that basis, our provisional view is that over time the key suppliers' DTC offer may become more of a constraint online but not in-store. The evidence does not show with sufficient certainty that Nike's and adidas's DTC offer across either channel, will become a significantly stronger constraint on the

³⁷⁷ See for example: [Nike website](#).

Parties in the market for the retail supply of sports-inspired casual apparel in the foreseeable future.

Multi-brand retailers

9.188 As well as considering suppliers' mono-brand DTC offer, we have considered whether multi-brand retailers might significantly grow their proposition and sales of sports-inspired casual apparel, such that their constraint on the Parties would differ in the foreseeable future. Since the majority of the analysis of multi-brand retailers' growth applies equally to footwear and apparel, the discussion where relevant to both footwear and apparel, is set out in chapter 8.

- *Foot Locker*

9.189 Foot Locker does not focus on apparel to the same extent as the Parties. It does sell some apparel, but this is a low share of its overall business (around [REDACTED]%). Given the links between footwear and apparel, if Foot Locker was to reposition itself to increase its focus on apparel, it could potentially become a stronger constraint on the Parties.

9.190 We asked Foot Locker to confirm its future plans for expansion in the UK. [REDACTED].

9.191 We consider that currently Foot Locker has some constraint on the Parties in apparel. We recognise that this constraint could be strengthened further (particularly given its current strong position in footwear) if it was to enhance its apparel proposition or if more larger stores were opened in future. However, we consider that the evidence does not show that there will be a significant change in the strength of its competitive constraint on the Parties in the market for the retail supply of sports-inspired casual apparel in the foreseeable future.

- *Other retailers*

9.192 Some multi-brand retailers such as ASOS and Next have recently started selling sports-inspired casual products. Therefore, it is possible that they may grow, though we cannot say how significant such growth might be. [REDACTED]:

[REDACTED]

9.193 We recognise that in keeping with the dynamism in the market and normal commercial pressures, some retailers are likely to be successful and others less successful. However, we have not seen evidence of a clear change in

proposition from these retailers such that any of them would become a significantly stronger competitive constraint on the Parties in the market for the retail supply of sports-inspired casual apparel in the foreseeable future.

Provisional view on multi-brand retailers' growth

9.194 Overall, as for footwear in chapter 8, it is our provisional view that while there is some scope for the strength of the competitive constraints on the Parties in the market for the supply of sports-inspired casual apparel from other retailers to increase over time, the evidence does not show with sufficient certainty that this would result in a significantly stronger competitive constraint on the Parties in the foreseeable future.

Provisional view on market developments

9.195 On balance, it is our provisional view that the Sports Direct fascia of Frasers Group, through its elevated stores, may become a more direct competitor to the Parties to some extent over the next few years. However, we consider that the evidence does not show with sufficient certainty that it will become a significantly stronger constraint on the Parties in the market for the supply of sports-inspired casual apparel in the foreseeable future.

9.196 The evidence shows that Nike and adidas are likely to continue to grow their DTC sales, predominantly online. However, we consider that there is evidence that the market as a whole is growing but that DTC growth does not appear likely to be at the expense of wholesale sales, and DTC growth will be in line with general growth in this market. Therefore, in our provisional view the evidence does not show with sufficient certainty that either Nike or adidas will become a significantly stronger constraint on the Parties in the market for the supply of sports-inspired casual apparel in the foreseeable future.

9.197 We consider that Foot Locker currently imposes some constraint on the Parties in apparel. While this constraint could be strengthened (particularly given its current strong position in footwear) if it was to enhance its apparel proposition or if more larger stores were opened in future, we consider that the evidence does not show that there will be a material change in the strength of its competitive constraint on the Parties in the market for the supply of sports-inspired casual apparel in the foreseeable future.

9.198 On that basis, we provisionally find that, taken together, the evidence does not show with sufficient certainty that the market developments examined above would amount to a materially stronger competitive constraint on the Parties in the market for the supply of sports-inspired casual apparel in the foreseeable future.

Provisional conclusion

- 9.199 In our competitive assessment, we have considered the degree of competition between the Parties and other retailers, both now and in the foreseeable future. As part of this assessment we have looked at a range of evidence which we have then considered in the round to form our provisional conclusion as to whether the Merger has resulted or may be expected to result in an SLC in the market for the retail supply of sports-inspired casual apparel (in-store and online) in the UK.
- 9.200 We first assessed the role of the suppliers and how retailers compete in that market. We provisionally find that while suppliers can restrict retailers' offerings, primarily through determining the products and volumes that retailers can access, the role of suppliers and the restrictions and influence they exert is less significant in apparel than in footwear. There is less dependence on Nike and adidas in the apparel market, as a greater proportion of apparel sales come from a wide range of other suppliers of branded products (who are generally less restrictive). Retailers (including the Parties) also develop, stock and price their own-brands and do not face any restrictions from suppliers on these products.
- 9.201 While suppliers place some restrictions on retailers' apparel offerings, we provisionally find that there remains significant scope for retail competition in the relevant market. There is evidence that retailers compete above and beyond the minimum standards set by suppliers, in particular:
- (a) that the Parties compete head-to-head, as well as with other competitors, on a multitude of different PQRS aspects in a bid to attract consumers and generate sales (eg marketing activity, range and mix of apparel brands, store refurbishments, website functionality and loyalty programmes); and
 - (b) suppliers can leverage their influence (eg through benchmarking of retailers) to encourage retailers to compete above and beyond their minimum standards. We note that suppliers are not fully incentivised to sufficiently restrict any deterioration in retailers' offering post-Merger in order to protect the interests of consumers.
- 9.202 Overall, we provisionally find that the role of suppliers would not prevent the Parties from having either the ability or incentive to degrade PQRS post-Merger.
- 9.203 Next, we considered market shares, the nature of the Parties' offerings and third party views on closeness of competition. With respect to market shares,

we provisionally find that the Parties are both large national multi-brand retailers of sports-inspired casual apparel. JD Sports is the largest retailer in this market, Footasylum is smaller and a few other retailers have a significant presence, including in particular, Sports Direct and Primark. However, we consider that market shares only give a basic indication of the Parties' presence and do not capture the closeness of competition between retailers in differentiated markets, such as this one.

- 9.204 Following our assessment of the Parties' offerings we provisionally find that the Parties have some similarities and some differences in their apparel offering. There are also a number of other retailers whose offerings have some similarity to the Parties, in particular Sports Direct, ASOS (which only operates online) and Nike and adidas (although these only offer a single brand). Third parties also ranked the Parties as competing closely with relatively few other close constraints. But we consider that the surveys, in particular, provide more meaningful evidence on how consumers view the Parties' apparel offerings and their substitutability.
- 9.205 We next examined the Parties' internal documents, considering in particular the extent to which they monitor each other and other retailers and their competitive responses. We provisionally find that:
- (a) Footasylum's documents, taken together, demonstrate that Footasylum sees JD Sports as its closest competitor with only Foot Locker also seen as a close competitor. However, we recognise that the documents do not distinguish between apparel and footwear, and that Foot Locker is more focused on footwear; and
 - (b) JD Sports' documents, taken together, demonstrate that JD Sports sees Footasylum as a close competitor alongside Foot Locker, ASOS, Nike and adidas.
- 9.206 We consider that those documents show a low degree of monitoring by the Parties of a range of other competitors.
- 9.207 Through our store exit and online surveys we obtained information from the Parties' customers about their shopping behaviour and their next best alternatives to the Parties' stores and websites. We note that we have not placed full evidential weight on the online survey results.
- 9.208 In both the exit survey and the online survey, substantially more of Footasylum's customers would divert to JD Sports than to any other retailer, which shows that Footasylum's apparel customers view JD Sports as the closest substitute for Footasylum. JD Sports' in-store apparel customers are equally likely to divert to Footasylum and Sports Direct. For JD Sports' online

apparel customers, Nike is seen by consumers as the next best alternative with Footasylum and Sports Direct also seen as close substitutes.

- 9.209 We have used the diversion ratios to calculate GUPPIs and provisionally find these to be high, particularly for Footasylum but also for JD Sports. The asymmetry of the GUPPIs is consistent with other evidence, for example the Parties' own internal documents. We consider that the in-store GUPPIs, for both JD Sports and Footasylum, demonstrate a strong incentive for the Parties to degrade PQRS across the Parties' sports-inspired casual apparel offerings post-Merger. Although the online and combined GUPPIs are lower than the in-store GUPPIs, they still indicate a strong incentive to raise prices or worsen their offer.
- 9.210 We analysed the impact of store openings and closures by Footasylum and other retailers on the revenues of JD Sports' stores and JD Sports' offering. This entry-exit analysis indicates Footasylum is the only retailer that has a negative impact on JD Sports in at least one of the analytical approaches across all three variations, ie an effect on revenue, the proportion of products sold at full price and the number of years since last refurbishment. We provisionally find that this evidence indicates that Footasylum is a close competitor to JD Sports and exerts a constraint on JD Sports.
- 9.211 Taken together the evidence shows that the Parties are close competitors, with JD Sports providing a stronger constraint on Footasylum than vice versa. Based on the same evidence, this shows that no other retailers currently exert a strong constraint on the Parties. Other retailers such as Sports Direct and Nike (particularly online) impose some constraint but none more so than either of the Parties.
- 9.212 We also considered whether there was scope for the strength of the competitive constraints from other retailers on the Parties to increase, including in particular via the repositioning of Sports Direct, growth of apparel sales at Foot Locker and growth of Nike's and adidas's DTC channels. We provisionally find that, on the basis of the evidence available, we cannot conclude with sufficient certainty that the repositioning or growth of any retailer will significantly change their competitive strength in the foreseeable future. Overall, taken together, the evidence does not show with sufficient certainty that such market developments would amount to a materially stronger competitive constraint on the Parties in the market for the supply of sports-inspired casual apparel in the foreseeable future.
- 9.213 Based on our assessment, we provisionally find 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.

9.214 On the basis of the evidence set out above, taken in the round, we provisionally conclude that the Merger has resulted or may be expected to result in an SLC in the market for the retail supply of sports-inspired casual apparel (in-store and online) in the UK.

9.215 We have considered whether there are any countervailing factors (such as entry or expansion by other retailers or efficiencies) which would be timely, likely and sufficient to prevent this SLC, in chapter 11.

10. Our assessment of coordinated effects

Introduction

- 10.1 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 have examined whether coordination is more likely as a result of the Merger. Our assessment is set out in this chapter.
- 10.2 Our Guidance sets out that the CMA will first analyse the characteristics of the market that could be conducive to coordination (ie alignment without any explicit agreement among the coordinating group). The CMA will then examine whether there is evidence that businesses in the market were coordinating pre-merger and if so, whether the merger would make coordination more stable or effective. If there is no evidence of pre-merger coordination, the CMA will examine whether the merger makes it more likely that businesses in the market will start to coordinate.³⁷⁸ The Guidance sets out that all three of the following conditions must be satisfied for coordination to be possible:
- (a) businesses need to be able to reach and monitor the terms of coordination;
 - (b) coordination needs to be internally sustainable among the coordinating group, ie businesses find it in their individual interests to adhere to the coordinated outcome; and
 - (c) coordination needs to be externally sustainable, in that the coordination is not undermined by competition from outside the coordinating group.
- 10.3 We have assessed whether the Merger might be expected to give rise to an SLC through coordinated effects, using this framework.

Parties' views

- 10.4 The Parties submitted that there was no evidence of concerns in relation to coordinated effects in the relevant markets. The Parties stated that a coordinated effects theory of harm was problematic for a number of reasons, including in particular that there was no:

³⁷⁸ CMA Guidance, paragraph 5.5.4.

- (a) evidence of pre-existing coordination, including on the alignment of interests within the alleged coordinating group (ie JD Sports and the key suppliers);
- (b) focal point identified for hypothetical coordination (in particular, due to the significant number of products allegedly covered and the significant amount of annual churn in the key suppliers' product ranges);
- (c) prospect for coordination to be internally stable (given asymmetries in the positions of the alleged coordinating group) or externally stable (given the large proportion of the market supplied by retailers outside of the alleged coordinating group); or
- (d) clear explanation as to what the Merger would change that would materially impact the prospects of the alleged coordination to emerge and be sustainable.

Third parties' views

- 10.5 As noted above, some third parties raised concerns about coordination. Broadly, these stated that there was currently coordination between JD Sports, Nike and adidas, that resulted in protecting JD Sports from retail competition, and that this coordination would be exacerbated as a result of the Merger.
- 10.6 [REDACTED], one third party stated that Nike and adidas provided access to their higher-tier branded products to a very limited set of retailers, including JD Sports and Footasylum, which made the supply of those products susceptible to coordination. It further stated that Nike and adidas provided JD Sports with preferential access to such products, without objective or transparent justification. This was cited as evidence of pre-existing coordination. [REDACTED] third party identified through a pricing analysis that, in the context of sales of higher-tier Nike and adidas products, Footasylum competed on price more often than JD Sports. This was cited as evidence showing that the Merger would increase the external stability of coordination.

Our assessment

Possible forms of coordination

- 10.7 In conducting our assessment, we have first considered what form any potential coordination might take. It was appropriate to conduct our assessment of the potential for coordinated effects with a specific hypothetical form of coordination in mind. Based on our assessment of the characteristics

of the relevant markets, and the evidence set out in paragraph 10.9, we have considered the following possible mechanism for coordination:

- (a) the coordinating group would include JD Sports, the largest retailer of branded sports-inspired casual products in the UK, and Nike and adidas, the largest two suppliers of such products.³⁷⁹ Nike and adidas could influence and control the retail supply of their products by providing RRP for their products and using selective distribution arrangements to allocate products to retailers;
- (b) the most likely focuses of coordination would be the price of and access to certain higher-tier branded products, which Nike and adidas make available to only a limited number of retailers within their selective distribution arrangements, including JD Sports. We consider price and access to such products to be the most likely focus of coordination due to the level of transparency of these two components in the markets; and
- (c) the terms of coordination would be most likely to emerge over time through repeated interaction in the markets. The coordinating group would collectively monitor retail behaviour, including prices. 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. The coordinating group would be incentivised to maintain such coordination due to the resulting higher profits, in light of each members' ability to respond to deviations. In response to deviation by JD Sports, Nike and/or adidas could make changes in product access (increasing supply of higher-tier products to other retailers) while in response to deviation by the suppliers, JD Sports could make changes by discounting below RRP or increasing its stock and sale of other suppliers' products. This coordination mechanism would result in less competition and reduced choice for consumers (in terms of reduced access to Nike's and adidas's products in other retailers) and a price for Nike and adidas products above the level absent coordination.

Pre-existing coordination

10.8 Pre-existing coordination is not required for a merger to lead to coordinated effects. However, generally speaking, a merger in a market already showing coordinated outcomes would be likely to make coordination more sustainable

³⁷⁹ See Appendix G for further details.

or more effective, unless the structure and scale of the merged entity is so different from those of the merging parties pre-merger that the incentive to coordinate is removed.³⁸⁰

10.9 To assess whether there was evidence of pre-existing coordination, we have considered the following:

- (a) internal documents from JD Sports, Nike and adidas (including emails), pricing analysis and supplier market shares. From our review of internal documents, we did not identify any specific evidence indicating that there is pre-existing coordination, although we recognise that such written documentation does not necessarily capture all relevant communication between the relevant parties;
- (b) from our pricing analysis, we have found that retailers generally price in line with RRP, which is provided by suppliers, and that pricing in the relevant markets is relatively transparent. We did not find any evidence which suggests that Nike and/or adidas rely on information from JD Sports (or any other retailer) to monitor retail behaviour;
- (c) from our review of supplier market shares, we did not find evidence of an alignment of interests to reach or sustain coordination, since the shares of Nike and adidas at JD Sports (and more generally in the market) have not been stable over the last 10 years. In particular, [redacted].³⁸¹

10.10 On the basis of the above we do not consider that there is sufficient evidence to provisionally find that pre-existing coordination is likely to be occurring in the hypothetical form set out in paragraph 10.7.

Conduciveness to coordination

10.11 We have considered to what extent the characteristics of the relevant markets are conducive to the hypothetical form of coordination set out in paragraph 10.7. This section considers the pre-Merger situation, with the change resulting from the Merger considered in the following section.

Condition one: ability to reach and monitor the terms of coordination

10.12 For coordination to emerge, the coordinating group needs to be able to reach a common view on the scope of such coordination. This does not need to involve a precise outcome but needs to be sufficiently clear to enable and

³⁸⁰ [CMA Guidance, paragraph 5.5.8.](#)

³⁸¹ See, for example Appendix G for Nike's and adidas's shares at JD Sports and Footasylum.

incentivise their behaviour to be aligned. To sustain coordination, they will also need to be able to observe each other's behaviour sufficiently to ensure that deviation from the coordinated outcome can be detected. If deviation goes undetected then there will be no incentive to sustain a non-competitive outcome.

10.13 In assessing whether JD Sports, Nike and adidas would be able to reach and monitor the terms of coordination, we have taken into account the following factors:

- (a) **complexity of identifying a focal point.** Nike and adidas supply thousands of products with multiple small variations within the relevant markets, which have different RRP's. Due to the fact that they sell differentiated products across a wide spectrum, ranging from value products through to premium products, it seems likely to be relatively difficult for Nike and adidas to identify sufficiently 'like for like' products (including within their higher-tier products) for the purpose of coordination. In addition, Nike's and adidas's product ranges change on a seasonal basis to a material extent, meaning that the terms of coordination would need to be revisited relatively frequently;
- (b) **lack of incentives to reach coordination.** As noted in paragraph 10.9(c), the market shares of Nike and adidas have been relatively volatile over the last 10 years. More recently, [REDACTED]. Following that development, [REDACTED].³⁸² The current [REDACTED] lessens the likelihood that they have sufficiently aligned incentives to reach a coordinated outcome;³⁸³ and
- (c) **relative lack of transparency around product access.** There is some lack of transparency around Nike's and adidas's product access decisions. Retailers do not have complete information about the product access (particularly in terms of volumes) that Nike and adidas provide to other retailers (though they are able to discern this to some degree through market monitoring).³⁸⁴ We note that by contrast there is more transparency within the relevant markets on price.

10.14 On the basis of the above, we provisionally find that it may be difficult for the coordinating group (as contemplated in paragraph 10.7) to reach and monitor the terms of coordination over pricing of and access to relevant products. We therefore consider it is unlikely that condition one is met.

³⁸² See, for example, Appendix G for Nike's and adidas's shares at JD Sports and Footasylum.

³⁸³ [CMA Guidance, paragraph 5.5.16](#).

³⁸⁴ For example, as submitted by some third parties in hearings with the CMA; summaries of hearings are available on the [inquiry webpage](#).

Condition two: internal sustainability

- 10.15 Coordination will be sustainable only where the additional profit from coordination is sufficiently high, and there is an effective mechanism to respond to deviation (making the profit from deviation sufficiently low to make it unattractive).³⁸⁵ If coordination is not sufficiently profitable, or the response of others to deviation is not sufficiently swift and costly to the business deviating, the short term benefits of deviating (ie having a more competitive offering) may outweigh the costs of punishment (ie the loss of the gains from coordination).
- 10.16 We consider that the most likely response to deviation from Nike and/or adidas would be to make changes in product access (increasing supply of higher-tier branded products to other retailers) while JD Sports could make changes by discounting below RRP or increasing its stock and sale of other suppliers' branded products.
- 10.17 In assessing whether the characteristics of the relevant markets are conducive to coordination (in particular, in the form set out in paragraph 10.7) being internally sustainable, we have taken into account the following factor:
- (a) **lack of incentives to sustain coordination.** As noted in paragraph 10.13(b), Nike's and adidas's market shares in the relevant markets have been relatively volatile, [X]. This volatility does not suggest that they have reached some form of coordinated outcome. This, along with the [X] highlighted in 10.13(b), indicates that these suppliers are unlikely to have sufficiently aligned incentives to sustain coordination.
- 10.18 On the basis of the above, we consider that the characteristics of the relevant markets do not appear to be conducive to coordination being internally sustainable in the form described in paragraph 10.7.

Condition three: external sustainability

- 10.19 All three of the conditions must be satisfied for us to conclude that coordination would be more likely than not post-Merger.³⁸⁶ Given our findings on the first and second conditions, we do not consider it is necessary to assess whether any coordination would be externally sustainable.

³⁸⁵ CMA Guidance, paragraph 5.5.15.

³⁸⁶ CMA Guidance, paragraph 5.5.9.

Evidence of Merger effect

- 10.20 We have considered whether the first and second conditions of coordination, namely, the ability to reach and monitor coordination and internal sustainability, would likely be satisfied following the Merger.
- 10.21 We provisionally find that the Merger is not likely to significantly strengthen the ability to reach and monitor coordination (in particular in the form set out in paragraph 10.7) or the internal sustainability of such coordination in the relevant markets, on the basis of:
- (a) there not being any fewer members of the hypothetical coordinating group as a result of the Merger;
 - (b) there not being any fewer products covered by the hypothetical scope of coordination as a result of the Merger;
 - (c) the Merger not having any material impact on the ability to monitor retail behaviour because the level of transparency and complexity in the relevant markets around price and product access would not be changed by the Merger; and
 - (d) the Merger not having any material impact on Nike's and adidas's market positions or, in turn, on the ability or incentive to reach and sustain a coordinated outcome.
- 10.22 Given this, we do not need to conclude as to the external sustainability of any potential coordination in these markets following the Merger.
- 10.23 Notwithstanding our provisional findings on coordination, we have considered the role of suppliers, including Nike and adidas, and their impact in shaping competition within the relevant markets as part of our competitive assessment set out in chapters 8 and 9.

Provisional conclusion

- 10.24 We provisionally find that:
- (a) it would be difficult for JD Sports, Nike and adidas to reach and monitor terms of coordination over the pricing of and access to certain Nike and adidas sports-inspired casual footwear and apparel products;
 - (b) the characteristics of the relevant markets do not appear to be conducive to coordination being internally sustainable; and

(c) the Merger is not likely to significantly increase the ability of JD Sports, Nike and adidas to reach and monitor such coordination or its internal sustainability.

10.25 On that basis, we provisionally conclude that the Merger is not likely, on a balance of probabilities, to result in an SLC on the basis of coordinated effects in the relevant markets.

11. Countervailing factors

Introduction

11.1 We have considered whether there are countervailing factors which may prevent the SLCs we have provisionally found from arising, as set out in this chapter. Specifically, we have considered the effect of entry and expansion and efficiencies. In considering entry and expansion, we have in particular looked at whether competition in the relevant market(s) may be affected as new businesses enter and expand to compete against the Merged Entity and whether such changes may prevent any SLCs we have provisionally found. We have also considered whether any efficiencies arising specifically from the Merger may also enhance rivalry such that the Merger does not give rise to any SLCs.

Entry and expansion

- 11.2 As set out in our Guidance, the CMA considers whether the entry and expansion of new businesses would offset the initial effect of a merger on competition to such an extent that no SLC would arise. We have considered whether such entry and expansion would be likely to prevent the SLCs we have provisionally found in footwear and apparel. In assessing this, we have considered whether entry and/or expansion would be timely, likely and sufficient.³⁸⁷
- 11.3 In chapters 8 and 9, we have considered whether the expansion and change in the proposition of existing competitors in the relevant markets such as Foot Locker and Frasers Group would increase their competitive constraint on the Merged Entity to offset any effects of the Merger. This section focuses on the extent to which market entry and expansion by retailers currently outside the relevant markets may be a countervailing factor. We have focused this assessment at the national level and on the combined in-store and online market, referring separately to the in-store or online segment of the market where appropriate to do so. For the purposes of our assessment and based on the evidence we have seen, we provisionally consider that there are no

³⁸⁷ In assessing whether entry or expansion might prevent an SLC, the CMA will consider whether it would be timely, likely and sufficient. This assessment involves a consideration of any barriers to entry or expansion that may exist, alongside other factors that affect firms' incentives or ability to enter or expand in a market. The CMA would normally consider entry or expansion that has a significant impact on competition within two years to be timely. In this case, we found no compelling reason to consider a shorter or longer period than two years. For further details, see [CMA Guidance, paragraphs 5.8.1 to 5.8.4](#).

material differences in the barriers to entry or expansion between footwear and apparel, and therefore we have not assessed these separately.

- 11.4 We have first considered the extent to which there are barriers to entry and expansion,³⁸⁸ before examining the possible sources of future entry and expansion.

Potential barriers to entry and expansion

- 11.5 We consider that in order for entry or expansion in the relevant markets to be a strong national competitive constraint, a competitor (after its entry or expansion) would need to:

- (a) have access to the relevant branded products in both sports-inspired casual footwear and apparel, which is sufficient in scope to exert a competitive constraint on the Merged Entity – given, for example, the importance of access to branded products as a competitive parameter in these markets (see chapters 8 and 9);
- (b) be a national multi-channel retailer, similar in size and scope to Footasylum, eg in terms of its national in-store footprint and online business, which could replace the loss of Footasylum as a competitive constraint at a national level as a result of the Merger; and
- (c) offer a retail fascia brand and in-store and online shopping experience that appeals to the Merged Entity’s target consumers and meets the requirements set by suppliers – given, for example: (i) the importance of a retailer’s brand and market position because of the younger target consumers in the relevant markets (eg based on the Parties’ and third parties’ evidence in Appendix H); and (ii) the importance of competition in the relevant markets on different aspects of a competitor’s QRS offering, including, but not limited to, a competitor’s marketing activity, store fittings, improvements to website functionality, marketing campaigns or partnerships with influencers (see chapters 8 and 9).

- 11.6 We have therefore considered the following possible barriers to entry into and expansion in the relevant markets:

- (a) support from suppliers and access to their branded products;

³⁸⁸ Barriers to entry and expansion are specific features of a market that give incumbent businesses advantages over potential competitors. Where such barriers are low, the merged entity is more likely to be constrained by entry; conversely, this is less likely where barriers are high. See [CMA Guidance, paragraph 5.8.4](#).

- (b) the costs and timescales to establish a national in-store footprint;
- (c) the costs and timescales to establish a national online business; and
- (d) retailer branding and market positioning.

(a) Support from suppliers and access to their branded products

Parties' and third parties' views

- 11.7 The Parties told us that support from the key suppliers – Nike and adidas – was critical to the success of any entry or expansion into the relevant markets. JD Sports told us that such support was ‘pivotal’ to the success of sports-inspired footwear retailers (and to a lesser extent for sports-inspired apparel retailers), not only for incumbents but also for new entrants. [REDACTED]. It added that if the ‘brands’ were satisfied with the performance of their existing partners, and neither Nike nor adidas supported a particular entrant, then it would be ‘unprofitable if not irrational’ for that player to enter or expand with respect to footwear, regardless of how good the entrant might otherwise be. JD Sports also told us that for a new store opening to be a success, it must stock sufficient range from Nike and adidas, and [REDACTED].
- 11.8 We have set out the evidence from third parties on this issue in Appendix H. Based on this evidence:
- (a) third parties echoed the Parties’ views on the importance of access to branded products when competing in the relevant markets and highlighted in particular the restrictions they faced in accessing the higher-tier products of Nike and adidas both in terms of range and volumes (see paragraph 3 of Appendix H);
 - (b) some third parties told us that JD Sports was perceived to have a particularly strong incumbency advantage in relation to access to branded products compared with other competitors (see paragraph 4 of Appendix H); and
 - (c) while the Parties told us that support from Nike and adidas and access to products was less of an issue for apparel than for footwear, we note that some third party retailers cited similar restrictions in accessing certain of their apparel products (albeit these appeared less frequent than for footwear) (see paragraph 5 of Appendix H).

Our assessment

- 11.9 We have considered the above submissions, and, as set out in chapters 8 and 9, recognise the importance of Nike and adidas in shaping the relevant markets and the impact of their segmentation policies on restricting retailers' access to the type and quantity of their products. We consider that in the context of new entry and expansion, receiving support from suppliers represents a significant barrier to entry and expansion, especially in relation to gaining access to higher-tier products (both in terms of franchise and volume allocation) from Nike and adidas. This applies both to in-store and online retailers and in relation to footwear and, to a lesser extent, apparel.
- 11.10 We consider that the extent to which such access represents a barrier for a new entrant depends on whether that entrant may already have the support of the key suppliers and access to some of their products.
- 11.11 We also note that access to these key suppliers' branded products can vary between existing competitors in the relevant markets. Therefore, it is also a potential barrier to expansion for market entrants as well as for other competitors.
- 11.12 Based on our assessment of the submissions and evidence from the Parties and third parties, it is our provisional view that support from suppliers, particularly Nike and adidas, and access to their branded products, poses a barrier to entry and expansion in the relevant markets. This applies both to in-store and online and in relation to footwear and, to a lesser extent, apparel.

(b) Costs and timescales to establish a national in-store footprint

Parties' and third parties' views

- 11.13 The Parties told us that it was not necessary to have a national in-store footprint to compete in the relevant markets, citing the success of smaller competitors. However, we note that some third parties cited the competitive advantages of operating with a national in-store footprint (see paragraphs 7 to 10 of Appendix H).
- 11.14 JD Sports told us that it considered that it was possible to achieve a 'regional or national presence' in the UK (from little or no presence) substantially comparable to that of Footasylum's 70 stores in around [redacted] to [redacted] years. It told us that normally, the strategy would be to start [redacted] and add stores in a few key urban areas before opening in [redacted]. JD Sports also told us that the costs of establishing the necessary infrastructure (eg distribution assets, UK

office space and technology infrastructure) were [REDACTED], and that 'off-the-shelf' IT solutions were an option for an entirely new entrant.

- 11.15 The Parties and third parties provided a wide range of costs for opening a new store (ranging from £0.2 million to up to £3 million in store fit-out and opening costs), and timescales (as quickly as two months and up to one year) (see paragraph 11 of Appendix H).
- 11.16 In relation to the availability of retail space, the Parties told us that there was no shortage of retail space on high streets and in shopping centres across the UK, a view which was supported by third parties.

Our assessment

- 11.17 Given the national SLCs we have provisionally found and the loss of Footasylum as a competitive constraint at a national level as a result of the Merger, we consider that a new entrant would need, among other things, to have a national in-store footprint broadly similar to that of Footasylum (ie around 70 stores).
- 11.18 We have looked at the evidence for the costs and timescales of opening a single store. As we would expect given the wide range of sizes and specifications of a store, the evidence from the Parties and third parties provided a wide range of costs and timescales (see paragraph 11.15). Based on the lowest cost estimate presented to us for opening a new store of £0.2 million, we would expect the costs of establishing a national in-store footprint of 70 stores to be at least £14 million. This figure could be substantially higher depending on the quality of any store fit-out (eg [REDACTED] told us that the minimum fit-out cost for each new [REDACTED] store was around £[REDACTED] – see also paragraph 11 of Appendix H). Further, we note that in addition to the costs of opening new stores, a new entrant would also need to invest in: (a) the necessary infrastructure (eg back office and distribution) and staff to support a national operation; and (b) the costs of any marketing and advertising expenditure in relation to building the retailer's brand and reputation to establish a new national presence in the market and be a 'desirable' retailer that could appeal to both the target consumer base and suppliers (see also paragraphs 11.29 to 11.37 where we consider the establishment of a retailer's branding and market positioning as a potential barrier to entry and expansion).
- 11.19 We have also considered the pace of expansion by the Parties and other retailers in general, which may be informative of whether entry or expansion in the relevant markets may be timely post-Merger:

- (a) with regards to the pace of the Parties' own past expansion, we note that since opening its first store in 2007, it took Footasylum just over a decade to establish around 70 stores in the relevant markets, including opening around 26 stores in the last three years. In JD Sports' case, it took 15 years after opening its first store in 1981, to operate a total of 56 stores by 1996,³⁸⁹ and its expansion over the last five years has involved the opening of 36 net new stores; and
- (b) with regards to the pace of past expansion achieved by other non-sports inspired specialist retailers, it took 18 years for Deichmann to grow to 102 stores in the UK and 20 years for Decathlon to grow to 44 stores, and since [redacted] acquired [redacted] in 2017, it has doubled the number of its stores to around [redacted].

11.20 The evidence on the pace of past expansion shows that achieving a national in-store footprint for a new entrant of comparable size to Footasylum would take considerable time, and well above the two years we generally consider for timely entry and expansion.

11.21 The extent to which the establishment of an in-store national footprint is a barrier would vary to some extent depending on the circumstances of the retailer. For example:

- (a) the total investment may be less of a barrier for a well-funded and larger multinational operator – however, it is our provisional view that achieving a national in-store footprint for any new entrant, regardless of its size or financial capability, could not be achieved within two years and therefore cannot be considered to be timely; and
- (b) this barrier may not apply to a retailer in an adjacent market with an existing national in-store footprint, however there are other barriers that we discuss in this chapter, which may apply, eg in relation to securing access to the relevant branded products of the key suppliers. We have considered whether entry from a retailer in an adjacent market may be timely, likely and sufficient when we consider the different possible sources of market entry later in this chapter.

11.22 Based on the above, it is our provisional view that achieving a national in-store footprint for a new entrant of comparable size to Footasylum would take considerable time, and well above the two years we would normally consider to be timely. This is also supported by the evidence from past entry and expansion, which shows that most existing large retailers became established

³⁸⁹ JD Sports' website, as visited on 7 February 2020.

over many years. It is also our provisional view that while the initial set-up costs to establish the required infrastructure may be relatively small for small scale entry, these costs can be more significant when scaled up for a national operation (including not only the costs of opening new stores (to the quality required to access the relevant branded products), but also establishing the necessary infrastructure and a new national brand. While we note that for some large potential entrants with access to sufficient funding, these upfront costs to establish a national in-store footprint alone may not be an insurmountable barrier, we consider that in any case, the establishment of a national in-store footprint would not be timely.

(c) Costs and timescales to establish a national online business

Parties' and third parties' views

- 11.23 JD Sports told us that, for a given retailer, the barriers to entering or expanding in the online market for the retail supply of sports-inspired casualwear were [REDACTED], provided that that retailer was supported by the 'brands'. Beyond that 'threshold issue', JD Sports estimated that the costs of setting up a website was [REDACTED] and that it could be set up relatively [REDACTED].
- 11.24 Footasylum also told us that it was 'straightforward' for online retailers to expand their existing presence and broaden their ranges and appeal to consumers. It cited Amazon, ASOS, Zalando and Boohoo.com as examples of 'sophisticated and well-resourced online retailers' that stocked broad ranges of sports-inspired apparel and footwear, including branded products from key suppliers, such as Nike and adidas. It added that all of these retailers had 'significantly' expanded and had done so quite rapidly over the last five years.
- 11.25 One third party ([REDACTED]) told us that there were numerous barriers to being an effective new national competitor in the market for sports-inspired footwear and apparel. [REDACTED] told us that in particular, the sector had become very crowded in terms of the number of retailers, making it harder to create the type of business and infrastructure, and to have the marketing investment, to be able to create a differentiated retail offering. [REDACTED] also identified product access as a barrier to entry and told us that this would be a barrier for both the online and 'brick and mortar' markets.³⁹⁰
- 11.26 In relation to barriers to expansion, there was a broad consensus that there were very few barriers to expanding online. Even the main constraint of

³⁹⁰ Summary of hearing with Company G, December 2019, paragraphs 18 and 19

warehousing capacity was not considered by third parties to be a material concern (a further description of third parties' views is set out in paragraph 14 of Appendix H).

Our assessment

11.27 The evidence we have considered indicates that the initial set-up costs for setting up an online business and the costs of scaling up the business are significantly lower in comparison to establishing a national in-store footprint. This is also supported by the instances of market entry involving online-only retailers into the relevant markets. However, we note that there are other barriers that can undermine the sufficiency of such online entry or expansion, for example in relation to access to branded products (considered above) and retailer branding and positioning, which is considered in more detail below.

11.28 It is therefore our provisional view that the costs and timescales to establish a national online business in the relevant markets do not on their own represent a significant barrier to entry or expansion.

(d) Retailer branding and positioning

Parties' and third parties' views

11.29 Both the Parties and third parties recognised the importance of a retailer's brand and positioning when competing in the relevant markets (eg recognition, credibility and authenticity of the retailer as a brand as well as the quality of its stores), in particular to appeal not only to the young target consumer base, but also to suppliers in accessing their most desirable branded products (see paragraphs 15 to 19 of Appendix H).

Our assessment

11.30 In relation to demand-side factors as a potential barrier, we have used the term 'retailer branding and positioning' to capture a broad range of factors that may contribute to the perceived 'quality' and 'desirability' of the retailer and its offer.³⁹¹

³⁹¹ This may capture for example: a retailer's brand (including its fascia); reputation in the market; and perception of the retailer by the key suppliers and the Parties' target consumers (which may be shaped by advertising and marketing), as well as any other contributory factor, such as the importance of the physical presentation of its stores, and the quality of the 'in-store' and/or online 'customer experience'.

11.31 We note the evidence from the Parties and third parties, which indicates the importance of a retailer's brand and market position (see also paragraphs 16 to 17 of Appendix H). For example:

(a) [REDACTED],³⁹² [REDACTED];

(b) [REDACTED];

(c) [REDACTED] told us that 'recognition, credibility and authenticity of the retailer as a brand within this sector' was 'critical - in particular to the younger demographic to which JD and Footasylum orientate their marketing and product proposition'; and

(d) [REDACTED] told us that 'most' consumers shopped with friends and visited the 'retailers that they think are cool'. It also told us that 'vendors have a tiered distribution approach and provide the coolest products to the coolest retailers first'.

11.32 While the Parties told us that the availability of social media provided a less costly means for marketing and raising consumer awareness, we also note that digital marketing expenditure accounts for a substantial proportion of Footasylum's advertising and marketing expenditure. For example, Footasylum estimated [REDACTED]. Of this £[REDACTED], we note that the vast majority ([REDACTED]) relates to digital marketing (eg paid searches and social media) (see paragraph 18 of Appendix H).

11.33 Based on the above evidence taken in the round, we consider that establishing a national brand and market position that would appeal both to the relevant target consumers and the key suppliers, are important aspects for the success of any new market entry, not only in terms of attracting consumers, but also in terms of getting access to the desirable branded products of the key suppliers. However, in our provisional view, there are inherent risks and uncertainties in relation to whether a new entrant would be able to establish its own brand and market position successfully to compete effectively in the relevant markets, and whether this could be achieved within two years. We therefore provisionally conclude that establishing a retailer's brand and market position that would appeal to both the target consumers and align with the requirements of the key suppliers, would represent a barrier to new entry and subsequently, rapid, large scale expansion.

11.34 For an existing retailer in an adjacent market, we would expect there to be barriers in terms of shifting its existing brand proposition and consumer

³⁹² [REDACTED].

perception – the extent to which these barriers apply would depend on the individual circumstances of the retailer. In some cases, a repositioning or rebranding may be considered undesirable by the retailer, if, for example, by targeting a younger consumer audience, this resulted in alienating the retailer's existing and established core consumer base. We have considered later in this section whether we would expect entry by retailers in adjacent markets to be likely, timely and sufficient.

11.35 It is therefore our provisional view that retailer branding and positioning represents a barrier to entry and expansion, although the extent of this barrier will depend on the retailer's individual circumstances for reasons given in paragraph 11.34.

Provisional conclusion on potential barriers to entry and expansion

11.36 Based on our assessment, it is our provisional conclusion that the following constitute barriers to entry and expansion in the relevant markets:

- (a) securing support from the key suppliers and access to their branded products and volumes comparable to those offered by Footasylum;
- (b) achieving a national in-store footprint in a timely manner; and
- (c) achieving national brand recognition that appeals to the young target consumer base (as well as meeting the requirements of its key suppliers to gain access to their branded products).

11.37 We consider that the barriers to entry or expansion set out in paragraph 11.36 would have the effect of making it very difficult for entry or expansion to be timely, likely and sufficient. However, the significance and extent of this is likely to vary depending on the relevant retailer's individual circumstances and the extent to which it was already established either in this, or an adjacent, market.

Possible sources of entry and expansion

11.38 We have considered below the various possible sources of entry and expansion and whether the barriers discussed above would likely be overcome in each case.

11.39 We have examined whether Nike or adidas have any plans to sponsor new entry or expansion into the UK, as well as the entry or expansion plans of overseas and UK retailers. We have also considered the Parties' arguments in relation to the threat of potential entry. We set these out in turn below.

(a) Sponsored entry or expansion

Parties' views

11.40 JD Sports told us that the key suppliers could lead or sponsor new entry or expansion and that there was no reason to think that Nike and adidas would not be equally as willing to sponsor other retailers (eg as they had done for [redacted]) to enter into the UK market if they considered that the standards of current incumbents had slipped.

Our assessment

11.41 We note that [redacted],³⁹³ [redacted].

11.42 Given the role of suppliers in shaping the market, we consider it is possible for suppliers to support new entry or expansion into the relevant markets. However, there are material uncertainties whether such entry or expansion would be timely or likely.

11.43 In this regard, [redacted]. We also note that there have been a number of instances where requests by retailers planning to sell [redacted] products in the UK for the first time were not granted by [redacted]. We have also not seen any evidence [redacted] sponsor new entry of any significant scale into the relevant markets.

11.44 Based on the evidence above, it is our provisional view that supplier-sponsored entry is possible and has the potential to be sufficient if such support, in particular from each of Nike and adidas, is properly targeted. However, we consider that such entry would not be timely, given the relatively long timescales to establish a national in-store footprint, and therefore we would expect such entry not to be sufficient at least over the medium term. In the absence of concrete plans for new entry, it is also our provisional view that potential entry sponsored by any of the key suppliers is not sufficiently certain and therefore, would not be timely or likely.

(b) Entry by overseas retailers

Parties' views

11.45 JD Sports told us that it [redacted] into the UK to come from an [redacted] and that this could '[redacted]', given their [redacted]. It added that it was aware that [redacted] was looking to enter the UK market and that it also expected an established European

³⁹³ [redacted].

retailer (such as [REDACTED]) to enter the UK. JD Sports also told us that these [REDACTED] operators faced '[REDACTED]' [REDACTED] and that it was '[REDACTED]', before they entered the UK market. It added that the 'brands' would not stop their expansion plans given that in the short term, the 'brands' were looking to [REDACTED].

Our assessment

- 11.46 While we recognise that it may be possible for a multinational retailer to gain the necessary support and sufficient access to the key suppliers' branded products, we do not consider that such entry of a multi-channel retailer on a national scale would be timely based on the pace of past and current store expansions by retailers in the UK. Moreover, as we set out below, we have not seen any other evidence that indicated that significant entry by a multinational operator would be timely or likely.
- 11.47 We note that [REDACTED] been in early discussions with [REDACTED] retailer which also sells online ([REDACTED]):
- (a) [REDACTED].
- 11.48 We note that discussions between [REDACTED] remain at a very early stage and there is material uncertainty in relation to: (a) the likelihood or timing of such entry (if it materialises); (b) in the absence of any agreement, the products it may eventually be allocated ([REDACTED]) and whether such product allocation would be sufficient for it to compete effectively with the Merged Entity; and (c) whether, having entered, it could establish a national in-store footprint in a timely manner. We note that [REDACTED] currently sells online and [REDACTED].
- 11.49 In relation to [REDACTED] overseas retailers, [REDACTED] told us that while its [REDACTED] business was expanding in Europe and the US, it had no plans at this stage for [REDACTED] to enter the UK. It also told us that the Merger could have a 'major impact' on its [REDACTED] business, and that if [REDACTED] did enter the UK market, it would be 'much harder' facing a 'combined' JD Sports/Footasylum business because their 'common suppliers' would 'try to distinguish channels and therefore supply selectively'.
- 11.50 Based on the above, and in the absence of any evidence of planned entry by other overseas retailers and the long timescales we would expect for an entrant to achieve a national in-store footprint, it is our provisional view that entry by overseas retailers into the relevant markets would not be timely or likely.

(c) Entry and expansion by UK retailers

Parties' views

11.51 Footasylum cited a number of examples of market entry over the last five years, including (among others) Realbuzz (entry in 2016, currently 13 UK stores), The Sports Edit (entry in 2015, online with one London store) and Gymshark (entry in 2012, online). JD Sports told us that in addition to the entry and expansion of traditional multi-brand retailers (such as Foot Locker, Sports Direct and NEXT) a number of established, non-athleisure retailers had begun to offer sports-inspired casualwear lines over the last five years, eg ASOS, H&M, Primark, Uniqlo and Topshop.

Our assessment

- 11.52 There have been a number of entry events over the last five years, however these have been on a relatively smaller scale, with entry limited primarily into the online channel with a very limited store footprint. We have not seen any evidence of material entry in the last five years, which we would consider to be significant or sufficient.
- 11.53 We have considered expansion by existing competitors in the relevant markets separately in chapters 8 and 9. Appendix H also sets out the details of the expansion plans of these competitors in the relevant markets. We have considered in chapters 8 and 9 whether the expansion and change in the proposition of existing competitors such as Frasers Group and Foot Locker would increase their competitive constraint on the Merged Entity. Further, we note from the evidence in Appendix H that none of the online-only retailers or competitors we have approached told us that it had plans to enter into in-store supply and open any physical stores over the next two years (see paragraph 22 of Appendix H). We have also seen no evidence of any plans for material new entry into online supply in the relevant markets, eg with regards to product range similar to those offered by the Parties or with regards to achieving online sales similar to those of Footasylum's online business (of around £[REDACTED]) (see paragraph 23 of Appendix H).
- 11.54 We note that UK retailers (including both those in the relevant markets and in adjacent UK markets) have been active both in terms of new store openings and closures. Over a two-year timeframe, the highest number of net store openings by an individual retailer was 20 (by [REDACTED]) followed by [REDACTED] with

four.³⁹⁴ While this may indicate that it is possible for retailers to expand in adjacent markets, we considered that substantial expansion to the extent required to establish a national in-store footprint would not be timely.

11.55 In relation to whether national retailers in adjacent markets, eg fashion-led or generalist retailers, have plans to enter the relevant markets, we note that none of the retailers we have approached had specific or concrete plans to enter or significantly expand their offering into sports-inspired casualwear, although we note that some retailers (such as [REDACTED]) plan to continue to open new stores.³⁹⁵ In relation to the specific plans of two retailers ([REDACTED] and [REDACTED]):

- (a) [REDACTED] told us that there was an opportunity for it to stock apparel products from a 'new sports-inspired casualwear brand' ([REDACTED]) from Autumn 2020 and that negotiations with this supplier were ongoing. However, [REDACTED] told us that subject to these negotiations, these products would only be available online and in a handful of [REDACTED] stores from Autumn 2020 in addition to its 'existing sports-inspired casualwear offering'. [REDACTED] also told us that it did not expect the 'on-boarding' of this new supplier to have a 'significant impact' on its revenue figures for 2020;
- (b) in relation to [REDACTED] as a potential entrant, we note that its plans are relatively limited in scope. It told us that it was currently running a 'very small trial' in five stores to see how well it could sell adidas products in a 'small part' of its stores. [REDACTED] told us that if this worked, it would 'probably roll this out' to a 'small number of stores' ([REDACTED]) for Q1 of 2020, a period where it believed 'activewear sales should be at their strongest'. It added that outside of this, it did not sell sports brands in its stores and had no plans to do so. We do not expect this to represent a significant shift of [REDACTED] product offering that would closely align with that of the Parties.

11.56 We also consider that if a retailer in an adjacent market did decide to enter, such a repositioning may not be timely. For example, [REDACTED] told us that for a retailer with access to the key suppliers and an existing national store footprint, it would take at least 18 months to appropriately stock its stores with new products and then a longer period to change consumer perception about where these products would be available and perceptions about the store fascia. While such a decision to reposition a retailer's offering may be

³⁹⁴ CMA analysis of data provided by JD Sports and Footasylum, the competitor data was provided by JD Sports. Data covered the period from 1 September 2017 to 1 October 2019. Store opening/closure data included the retailer's 'Kids' fascia.

³⁹⁵ [REDACTED] told us that it was a 'fashion retailer' offering casual clothing in addition to 'smarter products' and that only a 'small proportion' of its offering at any time could be regarded as sports-inspired. It also told us that it did not stock third party 'sports brands'. It told us that it did not compete with the Parties or any other sports-inspired business.

feasible, in our view, there would be significant barriers to doing so. These barriers include challenges, risks and costs arising from repositioning the retailer's brand and positioning to appeal not only to the Merged Entity's target consumers, but also to suppliers such as Nike and adidas, which would be necessary to enable the retailer to gain their support in accessing to their products and volumes.

- 11.57 Based on the above, and in the absence of any specific or concrete plans to enter or significantly expand their offering into sports-inspired casualwear, it is our provisional conclusion that entry or expansion by UK retailers outside the relevant markets would not be timely, likely or sufficient. In any case, even if a retailer in an adjacent market did decide to enter, we consider that securing sufficient access to the relevant branded products and/or repositioning the retailer's brand and market positioning, could pose substantial barriers to entry, as well as give rise to material risks and uncertainties in relation to its success, nor do we consider that such entry would be timely.

(d) Threat of entry

Parties' views

- 11.58 JD Sports told us that notwithstanding its view that there was already sufficient evidence of entry or expansion, the Parties were constrained by the potential threat of entry by an international retailer sponsored by the 'brands'. It added that such a constraint was explicitly recognised in the CMA's Guidance, which stated that 'a constraint from potential entry may rise even though there may be no expectation on the part of the [CMA] that entry would actually occur'.
- 11.59 JD Sports also told us that regardless of whether the CMA had been able to obtain evidence that indicated that entry was timely, likely or sufficient, it should take into account the extent to which the potential threat of entry would act as a constraint. It added that if JD Sports were hypothetically to attempt to exercise any market power to the detriment of consumers, the 'brands' would have both the ability and incentive to neutralise that, and that it was 'unrealistic to assume the brands would not do so, as otherwise they would simply cede value transfer from themselves to retailers'.

Our assessment

- 11.60 Our Guidance considers the circumstances where the threat of entry alone might deter the merged entity from exploiting any market power resulting from the merger to be rare.³⁹⁶
- 11.61 We consider that in this case, given the relatively long timescales to establish a national in-store footprint, we would not expect such entry on a national scale to be timely.
- 11.62 In relation to the threat of suppliers of branded products constraining and responding to a deterioration in the Parties' offering post-Merger, we have considered this as part of our competitive assessment (see chapters 8 and 9).

Provisional conclusions on possible sources of entry or expansion

- 11.63 Based on our assessment of the possible sources of entry and expansion from outside the relevant markets, whether sponsored by suppliers, overseas retailers or other UK retailers, we provisionally conclude that we would not expect such entry or expansion to be timely, likely or sufficient. We have not seen evidence of any concrete plans by online-only retailers or retailers in neighbouring markets looking to enter into in-store supply in the relevant markets.

Provisional conclusion on entry and expansion

- 11.64 Drawing on our assessment in the round, it is our provisional view that in order for entry or expansion in the relevant markets to be sufficient and an effective competitive constraint on the Merged Entity, a competitor (after its entry or expansion) would need to:
- (a) have access to the key suppliers' relevant branded products in both sports-inspired casual footwear and apparel, which is sufficient in scope to exert a competitive constraint on the Merged Entity;
 - (b) be a national multi-channel retailer, similar in size and scope to Footasylum, eg in terms of its national in-store footprint and online business; and

³⁹⁶ CMA Guidelines, paragraph 5.8.2.

- (c) offer a retail fascia brand and in-store and online shopping experience that appeals to the Merged Entity's target consumers and meets the requirements set by suppliers.

11.65 We consider that this would neither be timely nor likely given that:

- (a) based on past entry and expansion in-store and the rate at which the Parties and other entrants have grown their store footprint, we do not consider it likely that a national footprint of stores could be established in a timely manner. We consider that these timescales and the costs involved to achieve a national footprint (as well as the necessary supporting infrastructure and staff), together with the timescales and costs involved in establishing national brand recognition, would make it difficult for new entry to be timely or likely;³⁹⁷
- (b) given that we have found that over the past five years, no material national in-store entry has taken place, we consider that material de novo entry into the relevant markets is also unlikely;
- (c) while it is possible for a large existing non-UK retailer to enter, we have not seen evidence that this would be timely given the long timescales to establish a national store footprint and build UK retailer brand recognition with consumers; and
- (d) expansion from UK retailers operating in adjacent markets, such as other fashion retailers, would not be timely, likely and sufficient, given the time and challenges they would face in either building a new brand or substantially repositioning themselves, particularly given their very different and broader consumer base. This would also depend on the extent to which they were able to access branded products.

11.66 It is our provisional view that the costs of setting up and expanding an online business are relatively low and retailers in the relevant markets have plans to continue to expand their online businesses. We find that it is easier to enter and expand 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 entry and expansion online could provide a constraint to the Parties' online businesses, we consider that it would be a weaker constraint on their in-store business (see also chapters 8 and 9). Given the evidence we have seen, we

³⁹⁷ However, we note that for some large potential entrants with access to sufficient funding, these upfront costs may not be an insurmountable barrier.

do not consider that online entry and expansion would be timely, likely, or sufficient to outweigh the SLCs we have provisionally identified.

11.67 Based on our assessment above and in the light of the available evidence, it is our provisional conclusion that entry and/or expansion would not be timely, likely and sufficient to prevent the SLCs we have provisionally found.

Efficiencies

11.68 We have also considered whether there are any efficiencies arising from the Merger which could be considered a potential countervailing factor to the SLCs we have provisionally found. The details of our assessment are set out in Appendix I and summarised in this section.

11.69 As set out in our Guidance, in order for any claimed efficiencies to be found to be rivalry-enhancing, the evidence must lead the CMA to expect that the following cumulative criteria would be met: timely, likely, sufficient, merger-specific and incentivise the Parties to improve their consumer offer in the relevant markets.³⁹⁸

Parties' views

11.70 The Parties submitted that the following synergies were likely to arise as a result of the Merger (further details are set out in Appendix I):

(a) JD Sports submitted that the Merger would: [REDACTED]; and

(b) Footasylum told us that the Merger would: [REDACTED].

Our assessment

11.71 We have considered whether each of the efficiencies submitted by the Parties would meet the cumulative criteria set out in paragraph 11.69.

11.72 Based on this assessment, we consider that the proposed efficiencies would be timely (ie within two years) and likely to occur.

11.73 However, based on the evidence we have seen, we do not consider that the efficiencies submitted by the Parties are specific to the Merger. For example, in relation to whether the Merger would [REDACTED], as set out in our counterfactual assessment in chapter 5, we consider it likely that Footasylum would have stabilised its financial position absent the Merger. We also consider that the

³⁹⁸ CMA Guidance, paragraph 5.7.4.

proposed efficiencies [redacted] could be achieved through other means such as outsourcing or employing specialists and trading with Footasylum's wholesale channel. In addition, while the Parties quantified the fixed cost-savings they expected from the Merger, the Parties' have not provided evidence that these would be passed onto consumers in terms of reduction in prices or an improvement in quality of services (ie store refurbishments). In any case, we do not in general give as much weight to savings in fixed costs given such savings may often represent private gains to businesses and are less important in short-run price formation.³⁹⁹

11.74 We have seen limited evidence that the Parties' proposed efficiencies are rivalry-enhancing in terms of PQRS. JD Sports submitted that in the relevant markets, [redacted] and [redacted]. Therefore, we do not consider that any price efficiencies would be reflected in cost reductions for consumers. The other synergies are limited in their improvement to consumers and would not contribute to an overall increase in rivalry in the market.

11.75 Therefore, it is our provisional view that these efficiencies are unlikely to be sufficient to prevent the SLCs we have provisionally found in the relevant markets.

Provisional conclusion on efficiencies

11.76 Based on this assessment, we consider that the proposed efficiencies would be timely (ie within two years) and likely to occur. However, based on the evidence we have seen, we do not consider that these efficiencies are Merger-specific or rivalry-enhancing. Therefore, our provisional conclusion is that these efficiencies are unlikely to be sufficient to prevent the SLCs we have provisionally found in the relevant markets.

Provisional conclusions on countervailing factors

11.77 Based on our assessment set out in this chapter, we provisionally conclude that there are no countervailing factors to the provisional SLCs we have found in the relevant markets.

³⁹⁹ [CMA Guidance](#), paragraph 5.7.9.

12. Provisional conclusions

- 12.1 As a result of our assessment, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation.
- 12.2 We also provisionally conclude that the creation of that situation has resulted, or may be expected to result in an SLC in:
- (a) the retail supply of sports-inspired casual footwear (in-store and online) in the UK; and
 - (b) the retail supply of sports-inspired casual apparel (in-store and online) in the UK.
- 12.3 We provisionally conclude that there is no SLC on the basis of coordinated effects in the relevant markets.