

Completed acquisition by Hunter Douglas N.V. of convertible loan notes and certain rights in 247 Home Furnishings Ltd. in 2013 and the completed acquisition by Hunter Douglas N.V. of a controlling interest in 247 Home Furnishings Ltd. in 2019

Decision on relevant merger situation and substantial lessening of competition

ME/6867/19

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 20 March 2020. Full text of the decision published on 22 April 2020.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

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EXECUTIVE SUMMARY

1. The CMA's investigation relates to the completed acquisition by Hunter Douglas N.V. of convertible loan notes and certain rights in 247 Home Furnishings Ltd. (**247**) in 2013 (**2013 Transaction**) and the completed acquisition by Hunter Douglas N.V. of a controlling interest in 247 in 2019 (**2019 Transaction**) (both **the Transactions**). Hunter Douglas N.V., together with all entities under common ownership or common control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Enterprise Act 2002 (except for 247) are referred to as **Hunter Douglas**. Hunter Douglas and 247 are together referred to as **the Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Hunter Douglas and 247 is an enterprise and considers that it is or may be the case that two relevant merger situations (**RMS**) have been created by the 2013 Transaction and 2019 Transaction respectively as: (i) the 2013 Transaction conferred on Hunter Douglas the ability to exercise material influence over 247; and (ii) the 2019 Transaction resulted in Hunter Douglas acquiring a controlling interest in 247. The CMA found, in relation to each of the Transactions, that: (i) the Parties ceased to be distinct; (ii) the share of supply test is met; and (iii) the statutory period for a decision, as extended, has not yet expired.

3. The CMA became aware of the material facts of the 2019 Transaction on 28 October 2019. Subsequently, the Parties informed the CMA about the 2013 Transaction on 22 November 2019.
4. Whilst merger parties are not under an obligation to publicise a transaction, as Hunter Douglas did not disclose the material facts of the 2013 Transaction and 2019 Transaction until late 2019, the 2013 Transaction and the 2019 Transaction remained open to merger control scrutiny.
5. The CMA assessed whether the share of supply test was met in relation to the 2013 Transaction and 2019 Transaction by reference to the Parties' activities in 2019. This is because, in accordance with section 23(9) of the Enterprise Act 2002 (the **Act**), the CMA assesses whether an RMS has been created in relation to completed transactions at the time of its decision on reference.
6. The CMA considers that the counterfactual for the 2013 Transaction should reflect the conditions of competition absent the 2013 Transaction (namely that 247 would have continued as an independent market participant from Hunter Douglas) but take into account subsequent market developments in order to properly reflect the level and intensity of competition absent the 2013 Transaction. Similarly, the CMA considers that the counterfactual for the 2019 Transaction should reflect the conditions of competition absent the 2019 Transaction, namely that Hunter Douglas would have exercised a lower level of influence over the commercial policy of 247.
7. The Parties overlap in the online retail supply of blinds, shutters and curtains in the UK. In particular, Hunter Douglas (through Blinds2Go and Web Blinds) and 247 overlap mainly in the supply of made-to-measure (**M2M**) blinds in the online channel, in which customers click-to-order and do their own measurement and fitting (**online retail supply of M2M blinds**). Hunter Douglas is also engaged in the manufacturing and wholesale supply of window furnishings, including assembled blinds, raw materials and components for blinds in the UK.
8. The CMA considered whether it would be appropriate to widen the product frame of reference beyond the online retail supply of M2M blinds. The CMA found that there is limited demand-side substitutability between the M2M blinds sold online and other type of window coverings and sales channels, in particular because of: (i) the different characteristics and functions of M2M blinds; (ii) consumer preferences for the online business model; and (iii) the lower prices and broader ranges offered online retailers compared with the in-store and online channels. The CMA also found that supply-side considerations did not support widening the product frame of reference. Therefore, the CMA has assessed the effects of the Transactions in the online retail supply of M2M blinds in the UK.

9. Given the vertical link between Hunter Douglas's presence at wholesale level, in the supply of assembled blinds to retailers in the UK, and the Parties' activities in the online retail supply of M2M blinds, the CMA has also assessed the vertical effects of the Transactions. The CMA concluded, however, that the Parties would not have the ability to engage in a foreclosure strategy because downstream rivals have sufficient alternative sources of supply.
10. Therefore, the CMA's investigation focused on horizontal unilateral effects of the 2013 Transaction and the 2019 Transaction in the online retail supply of M2M blinds in the UK from the loss of competition between Hunter Douglas and 247.
11. The CMA considers that the Parties have very high combined shares of supply of [60-70]% in the online retail supply of M2M blinds in the UK, with an increment of [5-10]% brought about by the Transactions. The Parties are the largest and the third largest suppliers in this market, and there is only one other sizeable online retailer of M2M blinds, Interior Goods Direct.
12. The CMA also found that the Parties would have been close competitors absent the 2013 Transaction and the 2019 Transaction, as evidenced, in particular, by their internal documents, third-party views, and their position in organic and paid-for search results.
13. The same evidence suggests that the Merged Entity would face only one remaining significant competitor (ie Interior Goods Direct), which would be more than four times smaller than the Merged Entity following the Transactions. The handful of other small competitors active in the online retail supply of M2M blinds would impose only a limited constraint. The CMA also found that multi-channel M2M blinds retailers, such as Next and John Lewis, and marketplace platforms, such as Amazon and eBay, only exert very limited constraints on the Parties. Out-of-market constraints from ready-made blinds and other sales channels are also very limited.
14. Therefore, the CMA believes that the 2013 Transaction resulted in a realistic prospect of a SLC as a result of horizontal unilateral effects in the online retail supply of M2M blinds in the UK. Hunter Douglas may have had the ability to exercise (and in any case has actually exercised) its material influence to substantially lessen competition between the Parties. Additionally, the CMA believes that the 2019 Transaction strengthens the competition concerns described above.
15. The CMA therefore concludes that the 2019 Transaction also resulted or may be expected to result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the online retail supply of M2M blinds in the UK.

16. The CMA believes that it cannot rely on entry and/or expansion being sufficiently timely, likely or sufficient to offset the effects of the Transactions on competition. Although a limited number of competitors indicated some intention to enter or grow their UK presence, the extent of growth envisaged is generally very limited, and the available evidence did not establish that such entry and expansion will be timely and sufficient to replace the competitive constraint that would be lost by the Transactions.
17. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. Hunter Douglas has until 27 March 2020 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

18. Hunter Douglas is a global provider of window coverings such as blinds, shutters and curtains, and it is headquartered in the Netherlands. The Hunter Douglas group is comprised of 133 companies with 47 manufacturing and 86 assembly operations and marketing organisations across more than 100 countries. In the UK, Hunter Douglas operates through different companies at wholesale and retail level, using several different brands.¹ In 2018 it had global revenues of \$3.6 billion and UK revenues of [REDACTED].²
19. 247 is a UK-based and online-only supplier of window coverings such as blinds, shutters and curtains to retail customers. In 2019, 247's total turnover for the period ended 19 February 2019 was £22.2 million, of which [REDACTED] was in the UK.

Transactions

20. In October 2019, the CMA's mergers intelligence identified the 2019 Transaction that had completed in February 2019 as warranting an investigation following the receipt of an anonymous complaint.

¹ At wholesale level, Hunter Douglas is active in the UK through: Stevens (Scotland) Limited, Arena Blinds Limited, Custom West Trading Limited, Holis Industries Limited, Orgon Windows Fashion Limited and Orgon Limited Sunflex, Luxaflex, and HD Direct. Hunter Douglas used the following brands at wholesale level in the UK: Sunflex, Luxaflex, and HD Direct.

At the retail level, Hunter Douglas is active in the UK through: Thomas Sanderson Limited, Hillarys Blinds Limited, Blinds2Go Limited, Tuiss LLP and 247 Home Furnishings Limited. See Post-Transaction Structure, Hunter Douglas's response to the First s109 Notice dated 15 November 2019 (**First s109 Notice**), Annex A5.2.

² See [Hunter Douglas Annual Report 2018](#). See also Hunter Douglas's response to CMA's request for information dated 21 February 2020.

21. Following submissions from the Parties, the CMA became aware that, prior to the 2019 Transaction, Hunter Douglas may already have had the ability to exercise material influence over 247 since 2013. The background of the relationship between Hunter Douglas and 247 is set out below.
22. Hunter Douglas entered into discussions with [X] and [X] (together, the **247 Founding Shareholders**) in 2013 concerning a possible investment by Hunter Douglas in 247. On 30 April 2013, Hunter Douglas chose to invest in 247 via the acquisition of convertible loan notes, supplemented by certain rights, together with reciprocal put and call options exercisable both by the 247 Founding Shareholders and Hunter Douglas in 2019 (ie the 2013 Transaction). The rights accompanying the loan notes included:
- (a) 49% of the voting rights and a 49% share of the profits in 247;
 - (b) Right to convert the loan notes at any time to ordinary shares;
 - (c) Right to nominate a non-executive Director to the 247 Board (this right was never exercised); and
 - (d) Veto rights, of which notably the following:
 - (i) Appointment of additional directors (beyond founding members);
 - (ii) Approval of annual budget; and
 - (iii) Acquisitions;
 - (iv) Entering into new lines of business other than (a) M2M window coverings, (b) curtain-in-a-box in the UK; standard Velux roof-window blinds, accessories associated with the above and any other items sold by 247 on its UK website at the date of the agreement, all of which are to be sold principally through the internet without specifically targeting the large scale B2B market (interior designers, property management companies and letting agents);
 - (v) Geographic expansion;
 - (vi) Any backward integration into assembly or production of any of the products sold by 247;
 - (vii) Long term agreements (exceeding one year in duration);
 - (viii) Financing arrangements with banks or other parties;
 - (ix) Dividends in excess of [X] of profit after tax;
 - (x) Offers on the website at less than [X] gross profit; and

(xi) Termination of the existing supply agreement with Hunter Douglas.³

23. 247 was also required to provide monthly management accounts and commentary to Hunter Douglas. The sale documentation relating to the 2013 Transaction noted that 247 and Hunter Douglas intended to enter into a 'joint venture' arrangement.⁴ The Stakeholders Agreement included a strategic business plan to that end, as well as a confidentiality clause to keep Hunter Douglas's participation in 247 strictly confidential.⁵
24. On 6 December 2016, Hunter Douglas reduced its voting rights from 49% to 24.9%.⁶ All other rights and obligations remained per the 2013 Transaction (including the retention of a 49% share in the profits), with the sole amendments being the reduction of Hunter Douglas's voting rights. Hunter Douglas explained that the reduction was effected for regulatory reasons⁷ and in order to ensure that its interest in 247 remained confidential.⁸
25. On 11 May 2017, Hunter Douglas further reduced its voting rights to 4.9%. All other rights and obligations remained, including Hunter Douglas's right to a 49% share in the profits of 247.
26. During the course of 2018, the 247 Founding Shareholders made it known to Hunter Douglas that they would each be exercising their respective put options, leading to the acquisition by Hunter Douglas of 100% shares of 247. As a result of a desire to complete the Transaction before the end of 247's financial year 2018/19 (28 February 2019), the put options granted in 2013 were never formally exercised, but in all other respects the 2019 Transaction reflected the options granted by the 2013 Transaction.
27. The CMA found that the existence and details of the 2013 Transaction and the changes to Hunter Douglas's voting rights in 2016 and 2017 were kept confidential.⁹ The Parties do not dispute the CMA's position in this regard.¹⁰

³ See 2013 Stakeholders Agreement between Hunter Douglas, 247 and 247 Founding Shareholders on 30 April 2013 (the **Stakeholders Agreement**), Annex 7, Hunter Douglas's submission on Structure dated 27 November 2019 (**Submission dated 27 November 2019**).

⁴ The sale documentation was submitted to the CMA as annexes 1-16 of the Submission dated 27 November 2019.

⁵ Paragraph 3.5, Hunter Douglas's submission dated 6 January 2020 (updated) (**Submission dated 6 January 2020**) and annex 7, *2013 Stakeholder Agreement*, Submission dated 27 November 2019.

⁶ Paragraph 3.10, Submission dated 6 January 2020.

⁷ Changes to the UK corporate governance rules, as part of its implementation of the EU Fourth Money Laundering Directive, required companies to maintain a public register of persons with significant control.

⁸ Hunter Douglas explained that it wanted to keep its interests in 247 confidential because of: (i) order to avoid the potential for 'channel conflicts' between Hunter Douglas and third party retailer customers of its wholesale offer; [§]. Source: Paragraph 3.9, Submission dated 6 January 2020.

⁹ In particular, the material facts relating to the 2013 Transaction were not disclosed in the CMA's investigation in [Hunter Douglas/Hillarys](#).

¹⁰ Paragraph 2.2.1, Hunter Douglas's supplementary submission dated 12 February 2020 (**Submission dated 12 February 2020**).

Procedure

28. The CMA's mergers intelligence function identified the 2019 Transaction as warranting an investigation.¹¹ Subsequently, the Parties informed the CMA about the 2013 Transaction and the CMA found that the 2013 also warranted investigation.
29. The 2013 and the 2019 Transaction were both considered at a Case Review Meeting.¹²

Jurisdiction

Legal framework

30. The CMA has a duty to refer a completed merger to a Phase 2 investigation if it believes that it is or may be the case that (i) a RMS is created and (ii) the creation of that situation has resulted, or may be expected to result, in a SLC.
31. Under section 23 of the Act, a RMS arises when two or more enterprises cease to be distinct at a time or in circumstances falling within section 24 of the Act, either the UK turnover test or share of supply test is met, and the reference is made not more than four months from the later of the merger taking place or material facts being notified (discussed further in paragraphs 51 to 75 below).¹³
32. Two enterprises will cease to be distinct if they are brought under common ownership or control. Control includes situations falling short of outright voting control, including the ability directly or indirectly to control or materially to influence the policy of an enterprise, pursuant to section 26(3) of the Act. Three levels of control are therefore recognised: a controlling interest (de jure control); the ability to control policy (de facto control); and the ability materially to influence policy (material influence). The ability to exercise material influence is the lowest level of control that may give rise to a RMS.¹⁴
33. Section 26(4) of the Act allows for a new RMS to be created if the acquiring firm, which is already able to exert material influence over the target firm, acquires 'de facto' control or a controlling interest in the target firm.
34. Under section 24 of the Act, enterprises cease to be distinct for the purposes of section 23 of the Act when a completed merger took place not more than

¹¹ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9 to 6.19 and 6.59 to 60.

¹² See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

¹³ In accordance with section 24 of the Act.

¹⁴ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.14.

four months before the CMA takes its decision on reference, unless the merger took place without notice of material facts being given to the CMA or material facts being made public.

35. In accordance with section 23(9) of the Act, the CMA assesses whether a RMS has been created at the time of its decision on reference, unless the reference of an anticipated merger is subsequently treated by the CMA as being a reference of a completed merger pursuant to section 37(2) of the Act (in which case, it is at such time as the CMA may determine).

The Parties' submissions

36. Hunter Douglas made the following submissions in relation to jurisdiction:
- (a) The 2013 Transaction resulted in Hunter Douglas acquiring a controlling interest in 247 owing to the voting interests, veto rights and matching reciprocal option rights which Hunter Douglas acquired as part of the 2013 Transaction as well as to its industry experience and size;¹⁵
 - (b) Alternatively, the 2013 Transaction resulted in Hunter Douglas acquiring de facto control in 247 and the CMA should treat such an interest as if it were a controlling interest;¹⁶
 - (c) The CMA has fundamentally misinterpreted section 23 of the Act and should determine if the jurisdictional thresholds are met for the 2013 Transaction as at the time of the 2013 Transaction;¹⁷ and
 - (d) The fact that the Parties have not publicised a transaction which at the time did not amount to an RMS should not expose the Parties to merger control for an indeterminate period.¹⁸
37. Each of these points has been considered by the CMA within its assessment of jurisdiction, as set out below.

Enterprises ceasing to be distinct – common ownership

38. Each of Hunter Douglas and 247 is an enterprise. The CMA considered whether each of the 2013 Transaction and the 2019 Transaction resulted in

¹⁵ Hunter Douglas's Final Response to the CMA's Issues Letter dated 4 March 2020 (**Response to the IL**), paragraph 5.18, Hunter Douglas Supplementary Submission dated 12 February 2020, paragraphs 1.3(i) and 2.6 to 2.10. In Hunter Douglas's response to the fourth s109 Notice dated 16 January 2020 (**Fourth s109 Notice**), Hunter Douglas stated the interest acquired by Hunter Douglas in 247 with the 2013 Transaction 'would amount to at least material influence'.

¹⁶ Response to the IL, paragraph 5.19, Submission dated 12 February 2020, paragraphs 1.3(i) and 2.16 to 2.12.

¹⁷ Response to the IL, paragraphs 5.2 to 5.13, Submission dated 12 February 2020, paragraphs 2.23 to 25.

¹⁸ Response to the IL, paragraphs 5.15 to 5.17, Submission dated 12 February 2020, paragraph 2.26.

Hunter Douglas and 247 ceasing to be distinct by bringing them under common ownership or control, in accordance with section 26 of the Act.

The 2013 Transaction

39. As discussed in paragraphs 22 to 23 above, as part of the 2013 Transaction, Hunter Douglas invested in 247 via the acquisition of convertible loan notes, supplemented by certain rights, including a 49% share in the profits of 247, together with reciprocal put and call options exercisable both by the 247 Founding Shareholders and Hunter Douglas in 2019.
40. Hunter Douglas had the right to nominate a non-executive director to the board (subject to the approval of the 247 Founding Shareholders)¹⁹ and benefitted from extensive veto rights over the commercial decisions of 247, listed in paragraph 22.
41. As stated in the Guidance on the CMA's jurisdiction and procedure, a controlling interest generally means a shareholding conferring more than 50% of the voting rights in a company and that only one shareholder can have a controlling interest.²⁰
42. De facto control arises when an entity controls a company's policy, notwithstanding that it holds less than the majority of voting rights in the target company. This might occur where the shareholder has in practice control over more than half of the votes cast at a shareholder meeting or where an investor's industry expertise leads to its advice being followed to a greater extent than its shareholding would seem to warrant.²¹
43. The CMA considers that, despite Hunter Douglas's large minority shareholding²² and other associated rights, it did not hold more than 50% of the shareholder voting rights in 247 and it did not acquire the ability to unilaterally determine the strategic policy of 247 as it was not able (in law or in fact) to control a majority of the board or of shareholder voting rights in 247.²³ The existence and scope of the associated rights (including the veto rights listed in paragraph 22 and put and call options)²⁴ do not affect this conclusion

¹⁹ The CMA understands that Hunter Douglas never exercised its right to nominate a non-executive director.

²⁰ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.30.

²¹ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.28.

²² Which decreased as a result of the 2016 Transaction and the 2017 Transaction.

²³ The CMA understands that Hunter Douglas did not exercise its right to nominate a non-executive director to the Board or exercise its voting rights at shareholder meetings.

²⁴ Hunter Douglas highlights this fact in its Submission dated 12 February 2020.

as they do not confer, individually or jointly, the ability to unilaterally determine 247's commercial strategy.²⁵

44. In addition, the CMA has considered whether, by virtue of its market knowledge, experience and size, Hunter Douglas might have been able to influence a majority of the shareholders to such an extent that it was effectively able to set the policy of Hunter Douglas.²⁶ Given that the remaining shareholding is held by the 247 Founding Shareholders, who also act as the directors of the 247's board and run the business on a day-to-day basis, it is highly unlikely that Hunter Douglas would be able, by virtue of its size or influence, to control 247's policy (even if, on occasion, the 247 Founding Shareholders have sought advice from the Hunter Douglas board).
45. Finally, the CMA notes Hunter Douglas's submission that the CMA should treat de facto control as a controlling interest for the purposes of the Act where the test for reference is met.²⁷ Section 26(3) of the Act gives the CMA discretion to treat the acquisition of less than a controlling interest as an acquisition of control for the purposes of determining whether enterprises have ceased to be distinct. However, the exercise of this discretion does not affect the classification of the nature of control acquired.²⁸ The CMA's guidance on procedure and jurisdiction merely specifies that the CMA is likely to exercise its discretion where the test for a reference is met.²⁹
46. While the CMA considers that the 2013 Transaction did not give rise to a controlling interest or de facto control, it considers that the 2013 Transaction may have conferred on Hunter Douglas the ability to exercise material influence over 247.
47. Hunter Douglas acquired 49% of the voting (and economic) rights in 247 as a result of the 2013 Transaction, well above the 25% threshold for presuming the existence of material influence.³⁰ In addition, the CMA considers that the associated rights, including the right to nominate a non-executive director and veto rights covering many aspects of 247's strategic decisions (including the appointment of additional senior management, annual budgets, any financing, expansions into new lines of business and pricing offers below 15% gross profit) may have given it the ability to restrict 247's autonomy to carry out its

²⁵ In any event, the CMA notes that the 247 Founding Shareholders benefitted from very similar associated rights (including the same veto rights).

²⁶ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.28. As the Guidance notes, this factor could equally be relevant to a finding of material influence over the target company.

²⁷ Submission dated 12 February 2020.

²⁸ In particular, section 26(4) of the Act provides that the CMA may treat as separate RMSs the change from material influence to de facto control or a controlling interest or from de facto control to a controlling interest.

²⁹ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.29.

³⁰ *Mergers: Guidance on the CMA's jurisdiction and procedure*, January 2014, paragraph 4.20.

business activities and enabled Hunter Douglas materially to influence 247's strategic direction and commercial objectives.³¹

48. While Hunter Douglas's voting rights decreased as a result of the 2016 Transaction (from 49% to 24.9%) and the 2017 Transaction (from 24.9% to 4.9%), the CMA considers that these changes did not affect Hunter Douglas's ability to exercise material influence over 247. All of the associated rights (including veto rights which, as discussed in paragraph 22 above, covered many aspects of 247's strategic decision making) remained unchanged.

2019 Transaction

49. As a result of the 2019 Transaction, Hunter Douglas acquired 100% of the shareholding in 247, and therefore its interest in 247 increased from the ability to exercise material influence to a controlling interest.
50. Pursuant to section 26(4) of the Act, the 2019 Transaction may therefore create a new RMS. The CMA has exercised its discretion to assert jurisdiction over such changes in the level of control in a number of other cases³² and considers that it should exercise its discretion in this case because the CMA considers that the 2019 Transaction may have had a material competitive effect for the reasons set out below in paragraphs 227 to 232.

Enterprises ceasing to be distinct – at a time or in circumstances falling within section 24 of the Act

51. Under section 23 of the Act, a RMS may be created where enterprises cease to be distinct *at a time or in circumstances falling within section 24 of the Act* (emphasis added).

Decision within the statutory timeframes

52. Section 24 of the Act provides that enterprises cease to be distinct in the context of a completed merger when the merger took place not more than four months before the CMA takes its decision on reference, unless the merger took place without notice of material facts being given to the CMA or material facts being made public.

³¹ Hunter Douglas does not challenge this and in its Submission dated 12 February 2020 it submitted that the 2013 Transaction gave rise, at the very least, to material influence.

³² See for example the [Anticipated acquisition by Cavendish Square Partners \(General Partner\) Limited of a controlling interest in each of Lakeside 1 Limited \(Keepmoat\) and Apollo Group Holdings Limited \(Apollo\)](#) (ME/5213/11 and ME/5291/11), OFT decision of 24 November 2011 and the [Anticipated acquisition by Guardian Media Group of Trader Media Group](#), OFT Decision of 29 September 2003.

53. 'Material facts' comprise the necessary facts that are relevant to the determination of the CMA's jurisdiction.³³ In *Lebedev v DCMS*,³⁴ the Competition Appeal Tribunal (CAT) stated in relation to material facts that 'save in exceptional circumstances, the information should include facts which provide a reasonable basis for considering that there is or may be a 'merger' for the purpose of the Act, i.e. a situation where two enterprises cease to be distinct'.³⁵
54. The CMA does not consider that notice of material facts regarding the 2013 Transaction³⁶ and the 2019 Transaction was given prior to 22 November 2019 and 28 October 2019, respectively. In particular, the CMA notes that the Stakeholders' Agreement contained confidentiality obligations requiring the 247 Founding Shareholders to keep Hunter Douglas's participation in 247 strictly confidential. The Parties do not dispute the CMA's position in this regard.³⁷
55. Therefore, the four-month deadline for a decision under section 24 of the Act, for the 2013 Transaction is 22 March 2020 and for the 2019 Transaction, following extensions under section 25(2) of the Act, is 23 April 2020.
56. The initial period for consideration for both Transactions under section 34ZA(3) of the Act started on 27 January 2020 and the statutory 40 working day deadline for a decision was therefore 23 March 2020. However, as the four-month period under section 24 of the Act in relation to the 2013 Transaction ends before this date, the deadline for the CMA's decision on whether to refer the Merger for a Phase 2 investigation is the final working day of this four-month period, ie 20 March 2020.

Jurisdictional thresholds

Legal framework

57. An RMS is created when enterprises cease to be distinct at a time or in circumstances falling within section 24 of the Act and either the thresholds under sections 23(1) (the turnover test) or 23(2) (the share of supply test) of the Act are satisfied.

³³ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.44.

³⁴ *Lebedev Holdings Limited and Independent Digital News and Media Limited v DCMS* [2019] CAT 21 (*Lebedev*).

³⁵ *Lebedev*, paragraph 64.

³⁶ The material facts regarding the 2013 Transaction were not disclosed in the *CMA's investigation of the acquisition by Hunter Douglas of Bellotto Holdings Limited in 2017 (Hunter Douglas/Hillarys)*.

³⁷ Paragraph 2.2.1, Submission dated 12 February 2020.

58. In accordance with section 23(9) of the Act, the CMA assesses whether a RMS has been created at the time of its decision on reference, unless the reference of an anticipated merger is subsequently treated by the CMA as being a reference of a completed merger pursuant to section 37(2) of the Act (in which case, it is at such time as the CMA may determine).
59. In this regard, the Office of Fair Trading (OFT) stated in *Tesco/Brian Ford*³⁸ that '[i]n accordance with section 23(9) of the Act, the question whether a relevant merger situation has been created is determined immediately before the time of the decision on reference (that is, not when the parties originally ceased to be distinct [in 2003 in that case])',³⁹ and that '[t]he question of whether or not the OFT would have had jurisdiction under the Act at the time the transaction completed in 2003 is therefore irrelevant.'⁴⁰

Hunter Douglas's views

60. Hunter Douglas submitted that '[o]n a plain reading of section 23(9), the CMA must ensure, before a reference is made, that it has decided the question of whether a relevant merger situation has arisen that is not out of time (for the purposes of section 24). The section does not, however, state that the CMA is to determine whether a relevant merger situation has arisen on the basis of the factual matrix in place at the time of the reference decision.'⁴¹ Accordingly, market developments since the 2013 Transaction completed should not be taken into account when applying section 23(9) of the Act.⁴² On that basis, the jurisdictional thresholds are not met in relation to the 2013 Transaction, as the share of supply test would only be met by taking into account market developments that have occurred since 2013.⁴³
61. Hunter Douglas sought support for this statement from regulation 11 of the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (the Turnover Order). Regulation 11 of the Turnover Order provides that, for the purposes of determining turnover in accordance with section 28(2) of the Act, an enterprise's turnover shall be defined as 'where the question whether a relevant merger situation has been created is being determined, the date when the enterprises concerned ceased to be distinct enterprises or such

³⁸ *Completed acquisition by Tesco Stores Limited of Brian Ford Discount Store Limited*, (ME/3827/08) OFT decision of 22 December 2008 (*Tesco/Brian Ford*).

³⁹ *Tesco/Brian Ford*, paragraph 6.

⁴⁰ *Tesco/Brian Ford*, footnote 1.

⁴¹ Response to the IL, paragraph 5.3.

⁴² Response to the IL, paragraph 5.3.

⁴³ Response to the IL, paragraph 5.7; Submission dated 12 February 2020, paragraphs 2.15 to 2.20.

earlier date as the decision-making authority considers appropriate' (emphasis added).⁴⁴

62. Hunter Douglas also submitted that the CMA's interpretation of section 23(9) cannot be correct as it would lead to businesses remaining under a risk of merger intervention in perpetuity unless they choose to notify mergers to the CMA, which was not the intention of Parliament or the CAT.⁴⁵ Furthermore, Hunter Douglas submitted that the fact that parties have not publicised a transaction should not expose them to merger control risk for an indeterminate period.
63. Hunter Douglas further submitted that the present circumstances can be differentiated from *Tesco/Brian Ford* as, in that case, the OFT was asserting jurisdiction on the basis of a change to the methodology it applied to the share of supply test since the transaction had completed rather than any market developments.⁴⁶

The CMA's assessment

64. The CMA considers that, pursuant to section 23(9) of the Act, it shall determine the question of whether an RMS has been created at the time of the reference decision. In doing so, the CMA considers that it can base its decision on whether the share of supply or turnover tests are met on the information available to it as at the time of the decision (taking account of both market developments and any changes to the CMA's analysis and/or methodological approach since a transaction has completed), in accordance with the Act and the approach of the UK competition authorities in previous cases, notably *Tesco/Brian Ford*.
65. The CMA considers that, while Hunter Douglas and 247 may have ceased to be distinct in 2013 as a result of the 2013 Transaction, an RMS is only created under section 23(1) of the Act when enterprises cease to be distinct at a time of or in circumstances falling under section 24 of the Act (emphasis added).⁴⁷ The CMA considers that, pursuant to section 24(1)(b) of the Act, Hunter Douglas and 247 ceased to be distinct for the purposes of determining the existence of an RMS from the time notice of material facts regarding the 2013 Transaction was given.⁴⁸ In other words, section 24 of the Act is not only

⁴⁴ Response to the IL, paragraphs 5.9 to 5.10.

⁴⁵ Response to the IL, paragraphs 5.6 to 5.8; Submission dated 12 February 2020, paragraph 2.26.

⁴⁶ Submission dated 12 February 2020, paragraph 2.25. In *Tesco/Brian Ford*, Tesco argued that the analytical framework that the OFT would have applied in 2003 to grocery retail mergers (based on the Competition Commission's report in the Safeway mergers inquiries) would have led it to conclude that the merger did not give rise to an RMS and therefore it was inappropriate for it to find jurisdiction on the basis of changes to that analytical framework that had occurred in the interim period.

⁴⁷ I.e., the turnover or share of supply tests are met.

⁴⁸ For a period of four months from that date.

concerned with ensuring that the CMA can review a transaction within four months of notice of material facts being given, it provides that enterprises cease to be distinct for the purposes of section 23 of the Act from the date on which notice is given.

66. It follows that section 23(9) of the Act enables the CMA to determine the existence of an RMS, both in terms of whether enterprises cease to be distinct and whether the jurisdictional test is met, as at the time of the reference decision. In these circumstances, whether the 2013 Transaction met the share of supply or turnover test is irrelevant.
67. With respect to Hunter Douglas's interpretation of regulation 11 of the Turnover Order, for the reasons set out in paragraphs 64 to 65 above, the CMA considers that, for the purposes of determining the existence of an RMS under section 23 of the Act (and consequently as part of regulation 11 of the Turnover Order which relates to the creation of an RMS), the question of whether enterprises have ceased to be distinct is determined by reference to the time notice of material facts of a merger is given.
68. The CMA also rejects Hunter Douglas's submission that the CMA's interpretation of section 23 of the Act results in businesses being perpetually subject to merger control risk.⁴⁹ Hunter Douglas could have effectively managed this risk without the need to notify by publicising the 2013 Transaction. As stated in *Tesco/Brian Ford*, '[t]he Act is clear that – in choosing not to publicise a merger – acquirers may effectively be 'delaying' the termination of merger control risk until four months after the time at which the transaction is subsequently made public.'⁵⁰ This view was supported by the CAT in *Lebedev*.⁵¹ Moreover, as noted in *Tesco/Brian Ford*, 'The OFT has no discretion under the Act not to refer a transaction to [a Phase 2 investigation] simply on the basis that considerable time has passed since the merging parties originally ceased to be distinct.'⁵²
69. The CMA further notes that, not only did Hunter Douglas choose not to publicise the 2013 Transaction, but it also failed to disclose material facts regarding the transaction at the time that the CMA reviewed the *Hunter Douglas/Hillarys* merger in 2017.

⁴⁹ Response to the IL, paragraph 5.16.

⁵⁰ *Tesco/Brian Ford*, paragraph 4.

⁵¹ *Lebedev*, paragraph 55. Hunter Douglas submits that this case does not support the CMA's interpretation of section 23(9) of the Act (Response to the Issues Letter dated 4 March 2020, paragraph 5.4). The CMA notes that it does not base its interpretation of this section by reference to the CAT's judgment in this case – it only notes that the CAT recognised that merger parties are taken to accept the risk of continued merger control risk where they do not publicise a transaction.

⁵² *Tesco/Brian Ford*, paragraph 4.

70. Further, as Hunter Douglas highlighted, ‘the merger control regime in the Act is replete with time-limits for the various subsidiary stages, and very specific prescriptive provisions regarding the circumstances in which those limits can be extended and for how long. That approach clearly supports business certainty regarding potentially major transactions.’⁵³ The CMA considers that the multiple time limits provided for in the Act ensure certainty for merger parties and, had Parliament intended to limit the CMA’s ability to review mergers other than by reference to the four month period following notice of material facts being given, it would have done so in the Act.
71. Finally, in relation to Hunter Douglas’s submission regarding [Tesco/Brian Ford](#), the CMA does not agree that it is appropriate, or that there is any basis, to distinguish between market developments and changes in the CMA’s methodology when carrying out its jurisdictional assessment.
72. The CMA therefore considers that where notice of material facts has not been given, whether the jurisdictional thresholds were met at the completion of a particular transaction is irrelevant in determining if an RMS is created.⁵⁴
73. Accordingly, the CMA considers that it is acting within its powers in taking merger control jurisdiction over the 2013 Transaction and 2019 Transaction and that, by choosing not to publicise the 2013 Transaction, Hunter Douglas accepted the continued merger control risk.
74. The CMA considers that the share of supply test is met both in relation to the 2013 Transaction and the 2019 Transaction as both Parties are active in the online retail supply of M2M blinds and, as a result of the Transactions, they had a combined share (by revenue) of more than 25% in the online retail supply of M2M blinds in the UK in 2019 (see Table 1 below).
75. Accordingly, the CMA considers that it is or may be the case that each of the 2013 Transaction and the 2019 Transaction give rise to two separate RMSs.⁵⁵

Counterfactual

76. The counterfactual is an analytical tool used by the CMA to assess the likely effects of a merger. It is not set out in the Act, but is a hypothetical construct, against which the theories of harm identified by the CMA can be tested. It involves considering the state of competition without the merger. The role of

⁵³ [Lebedev](#), paragraph 82.

⁵⁴ The CMA has therefore not considered whether the jurisdictional thresholds were met in relation to the 2013 Transaction at the time that the transaction completed.

⁵⁵ Whether the share of supply or turnover test was met in 2013 is irrelevant for these purposes for the reasons set out in paragraphs 58 to 59.

the counterfactual and how the CMA assesses is set out in the [CMA's merger assessment guidelines](#) at paragraphs 4.3.1 to 4.3.29.

77. Hunter Douglas submitted that the correct counterfactual for the 2013 Transaction is the 'prevailing conditions of competition' which were in place immediately prior to the 2013 Transaction⁵⁶ as '[t]here is no basis on which to adopt an alternative counterfactual since there is no suggestion that such prevailing conditions are not realistic and neither is there a realistic prospect of a counterfactual that is more competitive than prevailing conditions, when looked at from the perspective of the market conditions in 2013.'⁵⁷
78. Hunter Douglas also submitted that it cannot be the intention of Parliament that the CMA be entitled to conduct a substantive assessment of a historical transaction against a future counterfactual.⁵⁸
79. Finally, Hunter Douglas submitted that, in relation to the 2019 Transaction, there is no conceivable basis on which the CMA can identify an SLC, as the 2019 Transaction did not confer any additional ability on Hunter Douglas to control the commercial strategy of 247 that it did not already have.

2013 Transaction

80. In practice, the counterfactual is a forward-looking exercise, as reflected in the guidance contained in the Merger Assessment Guidelines,⁵⁹ which states that 'In practice, the OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual against which to assess the impact of the merger. However, the OFT will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic (eg because the OFT believes that one of the merger firms would inevitably have exited from the market) or where there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.'⁶⁰
81. In circumstances where it is some time since the merger took place, the CMA considers that the counterfactual should reflect the conditions of competition absent the merger, including events which occurred in the market in the interim period (provided they were not clearly merger-specific). Indeed, as the

⁵⁶ Response to the IL, paragraph 2.28; Submission dated 12 February 2020, paragraph 2.30.

⁵⁷ Response to the IL, paragraph 2.34.

⁵⁸ Response to the IL, paragraph 2.34; Submission dated 12 February 2020, paragraph 2.34.

⁵⁹ [Merger Assessment Guidelines](#) (CC2/OFT 1254), September 2010.

⁶⁰ [Merger Assessment Guidelines](#) (CC2/OFT 1254), September 2010, paragraph 4.3.5.

CAT stated in *BskyB*,⁶¹ '[c]ompetitive conditions can and do change over time, and it is important to take into account the potential for change in the market in order to consider as fully as possible the level and intensity of the competition without the merger'.⁶²

82. The CMA's predecessors' decisions are consistent with this approach. In *Ryanair*,⁶³ the OFT noted that: 'both the UK competition agencies and European Commission have taken into account evidence on competitive conditions contemporary to the investigation in cases when the pre-merger conditions were some time ago (possibly years), rather than ossifying the analysis at the pre-merger time'.⁶⁴ In *Tesco/Brian Ford*, the OFT stated that it 'makes a decision on whether or not to refer the merger on the basis of the information available at the time of its decision. This applies not only to factual issues, but also to any developments in the OFT's analysis and thinking'.⁶⁵
83. In relation to Hunter Douglas's submission that it cannot be the intention of Parliament that the CMA be entitled to conduct a substantive assessment of a historical transaction against a future counterfactual, the CMA reiterates what the OFT stated in *Tesco/Brian Ford*, namely that 'whilst Tesco was fully entitled not to notify [...], it effectively took the risk of developments in the analytical framework applicable to this merger occurring between the time of the transaction completing and the time of it subsequently becoming public'.⁶⁶
84. Accordingly, the CMA considers that the counterfactual for the 2013 Transaction should reflect the conditions of competition absent the 2013 Transaction (more specifically, that there is a realistic prospect that 247 would have continued as an independent market participant from Hunter Douglas) and take account of the developments in the market (including Hunter Douglas's own expansion) since the 2013 Transaction.

2019 Transaction

85. As the 2019 Transaction gives rise to a separate RMS, the CMA has similarly considered that the counterfactual should reflect the conditions of competition absent the 2019 Transaction.

⁶¹ *British Sky Broadcasting Group PLC v The Competition Commission*, The Secretary of State for Business, Enterprise and Regulatory Reform supported by British Sky Broadcasting Group Plc [2008] CAT 25 (*BskyB*).

⁶² *BskyB*, paragraph 91.

⁶³ *Completed acquisition by Ryanair Holdings plc of a minority interest in Aer Lingus Group plc* (ME/4694/10), OFT decision of 15 June 2012 (*Ryanair*).

⁶⁴ *Ryanair*, paragraph 103.

⁶⁵ *Tesco/Brian Ford*, paragraph 8.

⁶⁶ *Tesco/Brian Ford*, paragraph 10.

86. For the reasons set out above, the CMA does not agree that the 2019 Transaction did not confer any additional ability on Hunter Douglas to control the commercial strategy of 247 that it did not already have. In particular, while Hunter Douglas may have had the ability to exercise material influence over 247, the 247 Founding Shareholders benefited from similar rights to those held by Hunter Douglas and in practice were likely to be more involved in setting the strategic direction of the 247 business, including defining and achieve its commercial objectives, as the only two directors on 247's board.⁶⁷ This means that, absent the 2019 Transaction, Hunter Douglas would not have been able to effect that 247 conduct its commercial policy in a way that is fully aligned with the interests of Hunter Douglas where that course of action was opposed by the 247 Founding Shareholders. Therefore, the CMA considers that the appropriate counterfactual for the 2019 Transaction is that 247 was capable of exercising some degree of competitive constraint on Hunter Douglas absent the 2019 Transaction.⁶⁸

Background

Business activities and relevant overlaps

87. The Parties are both active in the online retail supply of different types of blinds, shutters and curtains. Hunter Douglas is also active at the manufacturing and wholesale levels of the supply chain for different types of window furnishings, including assembled blinds, raw materials and components for blinds.⁶⁹ 247 is only present at the retail level of the supply chain.

Supply of blinds online

88. There are different types of blinds (eg roller blinds, vertical blinds, roman blinds), and supply channels (ie online, in-home and in-store) for blinds.

⁶⁷ On this basis the present circumstances can be distinguished from [West Midlands Travel Limited of the joint venture shares of Laing Infrastructure Holdings Limited and Ansaldo Transporti Sistemi Ferroviari Spa in Altram LRT Limited](#), OFT decision dated 2 March 2006. In that case, the OFT found that in the five years preceding the merger, West Midlands Travel Limited had been in de facto control of the JV with the other two shareholders (Laing and Ansaldo) not playing any role in the strategy of the JV. Accordingly, the OFT concluded that the merger would not change the ability and incentive of West Midlands Travel to alter any parameters of competition.

⁶⁸ The effect on competition from Hunter Douglas moving from the ability to exercise material influence to acquiring a controlling interest is considered more fully in paragraphs 221 to 232 of the decision.

⁶⁹ At a wholesale level, some wholesalers and retailers purchase or import fully-assembled blinds, while others purchase components and materials and fabricate the assembled blinds, using machinery or by hand. Most wholesalers of blinds are able to provide a range of different blind types, although there are some that focus on specific products.

89. Hunter Douglas supplies blinds online through the Blinds2Go and Web Blinds brands and websites.⁷⁰ 247 supplies M2M blinds online only through its websites.⁷¹ Neither 247, Blinds2Go or Web Blinds offer a fitting service and customers are required to fit the product themselves or through a tradesperson. This sales channel is referred to as online (click-to-order) (as mentioned above, throughout this document, this sales channel is referred to as **online**),⁷² which is distinct from the in-home and in-store sales channels, as described below in paragraphs 121 to 127.⁷³
90. With regard to the online retail supply of M2M blinds, 247 generated UK revenues in 2018 of approximately [REDACTED]. Blinds2Go and Web Blinds had total UK revenues of [REDACTED] in 2018.⁷⁴
91. Advertising and marketing M2M blinds, both in the online and in-home channels, is primarily achieved through search advertising (on a pay-per-click (PPC) or paid search basis) and search engine optimisation so that their website is found in the 'organic' search results.⁷⁵ M2M blinds retailers also use social media, emails and, to a more limited extent, TV advertising.⁷⁶ The aim of online retailers is for customers to purchase through their website, whilst in-home retailers and in-store use the website to generate leads.
92. Hunter Douglas submitted that a key recent market development is the growing expansion of online sales of blinds, in particular of M2M blinds.⁷⁷

⁷⁰ Web Blinds is owned by Blinds2Go and Hunter Douglas has a 65% controlling interest in Blinds2Go.

⁷¹ Product range available on 247blinds.co.uk covers: (i) roller blinds, (ii) wooden blinds, (iii) vertical blinds, (iv) roman blinds, (v) venetian blinds, (vi) day and night blinds, (viii) conservatory blinds, (iv) Velux blinds, (x) vista blinds and (xii) double roller blinds. Product range available on blinds-2go.co.uk covers: (i) roller blinds, (ii) wooden blinds, (iii) vertical blinds, (iv) roman blinds, (v) venetian blinds, (vi) day and night blinds, (viii) conservatory blinds, (iv) Velux blinds, (x) shutter blinds, (xii) children's blinds, (xiv) perfect fit blinds, (xv) pleated blinds (xvi) bifold blinds, and (xvii) thermal blinds. Hunter Douglas's response to question 10.1, First s109 Notice.

⁷² In the online channel for M2M blinds, customers supply their measurements to a retailer and select colour, style and materials for the blind. The retailer will then source a fully assembled blind to fulfill the customer requirements and arrange delivery. On delivery, the customer can then fit the blinds themselves by following the instructions from the retailer.

⁷³ Hunter Douglas also supplies M2M blinds through the in-home sales channel across the UK (through its Hillarys and Thomas Sanderson brands).

⁷⁴ Annex K, Hunter Douglas's response to CMA's request for information dated 21 February 2020.

⁷⁵ Search advertising is where an advertiser pays for its advert (typically in the form of a text link) to appear next to the results from a consumer's search on an internet search engine. The selection and targeting of these adverts is based primarily on keywords entered by the user. Consumers can then click on the text link, as they can with the other organic search results (ie those that have not been paid for). Search advertising is aimed at driving consumers to take a particular action such as clicking a link. Advertisers pay for it for on a per-click basis. (see also CMA's market study interim report, [Online Platforms and Digital Marketing](#), 18 December 2019, paragraphs 2.34 et seq.)

⁷⁶ Hunter Douglas's response to question 11, second s109 Notice dated 15 December 2019 (**Second s109 Notice**).

⁷⁷ See Figure 4-1, Submission dated 6 January 2020 showing that [60-70]% of Hillary's leads in window coverings come via the internet (just [10-20]% in 2007). See also *Hunter Douglas/247 Home Furnishings Market Overview* prepared by Alix Partners for Hunter Douglas, 4 December 2019 which mentions 'continued growth online'.

Supply of shutters online

93. Hunter Douglas submitted that the online retail supply of shutters involves the same steps as those for the online retail supply of M2M blinds.⁷⁸ Both Hunter Douglas (through Blinds2Go) and 247 sell shutters online generating limited UK revenues of [£] and [£] respectively.

Supply of curtains online

94. The CMA notes the online retail supply of curtains (both M2M and ready-made) appears to involve the same steps as those for the retail supply online of blinds. Both Blinds2Go and 247 sell ready-made and M2M curtains online, with UK revenues in 2018 of [£] and [£] respectively.

Frame of reference

95. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the 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. The CMA will take these factors into account in its competitive assessment.⁷⁹

Overlap products

96. The Parties' activities principally overlap in:
- (a) online retail supply of M2M blinds;
 - (b) online retail supply of M2M curtains;
 - (c) online retail supply of ready-made curtains; and
 - (d) online retail supply of shutters.
97. The Parties are also active in vertically related products because Hunter Douglas is also active at the wholesale level in the supply of assembled blinds, raw materials and components for blinds and other window furnishings. 247 is only active at the retail level.

⁷⁸ Hunter Douglas's response to question 10.1, CMA's Enquiry Letter dated 15 November 2019 (the **Enquiry Letter**) (Part 1).

⁷⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

98. For the purposes of this investigation, the CMA has focussed on:
- (a) horizontal unilateral effects in the retail supply online of M2M blinds; and
 - (b) vertical effects in the wholesale supply of M2M blinds.
99. The CMA also considered: (i) the horizontal effects of the Transactions in relation to the supply of curtains and shutters;⁸⁰ and (ii) the vertical effects (input foreclosure) of the Transactions in relation to the wholesale supply of raw materials and components for blinds.⁸¹ However, the CMA found that neither the 2013 Transaction nor the 2019 Transaction gave rise to competition concerns within these frames of reference. These product areas are therefore not considered further in this decision.

Product frame of reference

100. Hunter Douglas submitted that the CMA should adopt a single frame of reference for the retail distribution of window coverings in the UK and that no distinction should be drawn between curtains, blinds and shutters (or alternatively that the frame of reference is at least as wide as curtains and blinds) as a result of both demand-side and supply-side considerations.⁸² Hunter Douglas also submitted that the candidate market previously identified in [Hunter Douglas/Hillarys](#) does not reflect the current economic market in 2020. Further, even if such an approach is considered, the constraints exercised by out-of-market competitors must be recognised.
101. As a starting point in this investigation, the CMA considered the online retail supply of M2M blinds.⁸³ The CMA then considered whether this should be widened to include the following categories of products:
- (a) curtains and shutters;
 - (b) ready-made products; and
 - (c) other sales channels, eg in-store and in-home.

⁸⁰ Regardless of the exact definition of the frame of reference, the Transactions only resulted in a small increment to Hunter Douglas's low share in relation to the supply of curtains and shutters and the Parties are sufficiently constrained by a number of other suppliers. Furthermore, no third parties expressed concerns regarding the horizontal effects of the Transactions in relation to the supply of curtains and shutters.

⁸¹ Regardless of the exact definition of the frame of reference, the CMA considers that Hunter Douglas would not have the ability to adopt an input foreclosure strategy in relation to the wholesale supply of raw materials and components for blinds because the Transactions only resulted in a small increment to Hunter Douglas's share in relation to the supply of raw materials and components for blinds and the Parties are sufficiently constrained by a number of other suppliers. Furthermore, limited concerns have been raised by third parties.

⁸² Paragraph 4.9, Submission dated 6 January 2020.

⁸³ [Merger Assessment Guidelines](#), paragraph 5.2.6.

102. The assessment of whether to widen the frame of reference from online retail supply of blinds is set out below.

Blinds versus curtains and shutters

Hunter Douglas's views

103. Hunter Douglas submitted that blinds, curtains and shutters (or alternatively at least blinds and curtains) should be aggregated in the same product frame of reference. It submitted that:
- (a) On the demand-side, curtains, blinds and shutters have the same purpose (in-home decoration, namely control of sunlight and privacy) and customers switch between each of them;⁸⁴
 - (b) Consumers typically select appropriate window coverings based on price, functionality and design depending upon the window which they are seeking to cover;⁸⁵
 - (c) Hillarys data from 2019⁸⁶ showed that [X] of customers that expressed an interest in purchasing curtains also expressed an interest in blinds. Further, [X] of customers expressing an interest in shutters also expressed an interest in blinds.⁸⁷ Hunter Douglas considers that this suggests that the different window coverings are substitutable;⁸⁸
 - (d) A fall in sales of one window covering product is typically matched by an increase in sales of another window covering. Hunter Douglas refers to a report by AMA Research on domestic window coverings market for 2018-2022 (the **AMA Report**) to support its view, noting that the AMA Report states that: (i) there has been a marginal decline in the value share of curtains, and to a lesser extent blinds, in favour of shutters as the availability of more affordable plantation shutters has increased;⁸⁹ and (ii) curtains face increased competition from other types of window coverings, with sales of shutters and automated blinds increasing at the expense of

⁸⁴ Paragraph 4.9, Submission dated 6 January 2020.

⁸⁵ Paragraph 4.9, Submission dated 6 January 2020.

⁸⁶ Annex E1.2, *Hillarys Lead Mix*, Hunter Douglas's response Fourth s109 Notice.

⁸⁷ Paragraph 2.2, Response to the IL.

⁸⁸ The CMA notes that in *Hunter Douglas/Hillarys*, Hunter Douglas provided data from its Blinds2Go and Curtains2Go sites suggesting that [20-30]% of visitors to Curtains2Go also looked at blinds; while only [5-10]% of visitors to Blinds2Go also looked at curtains. The CMA noted in *Hunter Douglas/Hillarys* that this asymmetry could reflect the Parties' focus on blinds and/or changing fashion, with a trend currently to replace curtains with blinds, which is consistent with the CMA's current conclusion on a narrower product scope.

⁸⁹ The *AMA Report*, page 30 and 63.

curtain purchases, while there is significant scope to encourage consumers to shift from curtains to blinds;⁹⁰

- (e) From a supply side, all main retailers of window furnishings offer a range of curtains, blinds and shutters. Retailers generally stock all categories of window covering products in order to cater for wide-ranging consumer preferences;⁹¹
- (f) Customers are offered a range of options both in-store, in-home and online (eg through cross-advertising between websites).⁹² Many of those retailers (John Lewis, Laura Ashley, Next, Dunelm, Amazon) benefit from a brand recognition far in excess of that of the Parties and therefore exercise a competitive constraint on the activities of the Parties in excess of the level which might be shown by market shares alone;⁹³ and
- (g) Hunter Douglas submitted that reliance on the SSNIP test alone is too narrow and fails to identify the boundaries of the relevant market. Instead, it submitted that there is a chain of substitution between products which are differentiated on price and quality in which aesthetic and functional questions are determinative.

CMA's assessment

- 104. In [Hunter Douglas/Hillarys](#), the CMA concluded that there was a product frame of reference for the retail supply of blinds, separate from curtains and shutters.⁹⁴ The CMA found a range of evidence indicating that the same approach is also appropriate in this investigation.
- 105. In relation to demand-side substitutability, the majority of blinds retailers that participated in the CMA's investigation (most of which offer more than one type of interior window coverings) told the CMA that they do not believe customers would switch from blinds to curtains or shutters in response to a small but significant non-transitory increase in price (**SSNIP**). Third parties told us, for instance, that:
 - (a) Consumers typically choose a specific type of interior window covering early on based on aesthetical and functional considerations and would postpone the purchase or shop around within a product category in case of a price rise;

⁹⁰ Paragraph 2.3, Response to the IL. See also the [AMA Report](#), page 31.

⁹¹ Paragraph 2.5, Response to the IL.

⁹² Paragraph 4.13, Submission dated 6 January 2020.

⁹³ Paragraph 2.4, Response to the IL.

⁹⁴ [Hunter Douglas/Hillarys](#), paragraphs 53 to 59.

- (b) This choice is typically driven by trends in customer preferences; and
- (c) A price increase would need to be significantly larger to change the patterns of customer behaviour so they purchases outside the product category.⁹⁵
106. The CMA also considered the Parties' internal documents. The CMA notes that the contemporaneous record of the board-level consideration of Hunter Douglas's proposed acquisition of Blinds2Go in 2015 considers the rationale for the transaction by reference to blinds only (with there being no mention of curtains or shutters).⁹⁶
107. The CMA also notes that both Blinds2Go and 247 have separate (although linked) websites for curtains and blinds.
108. Finally, the CMA notes, in relation to specific submissions from Hunter Douglas, that:
- (a) The AMA Report may suggest (at most) some migration from blinds and curtains to shutters, but it does not support the position that customers are switching from curtains and blinds as a result of a SSNIP. In any case, customers seem to be migrating from curtains to blinds, not the reverse;⁹⁷ and
- (b) Hunter Douglas did not submit any additional evidence to support supply chain substitutability amongst different types of window coverings.⁹⁸ The CMA notes that it uses the hypothetical monopolist test as a tool to check that the relevant product frame of reference is not defined too narrowly⁹⁹ and that customers' responses to questions about whether they would switch in response to a SSNIP are a relevant source of evidence. However, this is not the only source of evidence that the CMA has

⁹⁵ For instance, one retailer suggested that such a switch was unlikely because the price for a blind is significantly less than for a M2M curtain or shutter. Only two blind retailers considered that customers would switch between interior window covering types in response to a SSNIP.

⁹⁶ *Hunter Douglas Board Minutes (9 September 2015)*, Annex G10.1, Sixth s109 Notice.

⁹⁷ The CMA notes, in this regard, that, in *Hunter Douglas/Hillarys*, Hunter Douglas provided data from its blinds2go and curtains2go sites suggesting that [20-30]% of visitors to curtains2go also looked at blinds; while only [5-10]% of visitors to blinds2go also looked at curtains. The CMA noted in *Hunter Douglas/Hillarys* that this asymmetry could reflect the Parties' focus on blinds and/or changing fashion, with a trend currently to replace curtains with blinds, which is consistent with a narrower product scope.

⁹⁸ Paragraph 2.8, Response to the IL.

⁹⁹ *Merger Assessment Guidelines*, paragraph 5.2.8. A set of substitute products (a 'candidate market') will satisfy the hypothetical monopolist test if a hypothetical firm that was the only present and future seller of the products in the candidate market would find it profitable to raise prices (*Merger Assessment Guidelines*, paragraph 5.2.10). Under this framework, a candidate market will fail the hypothetical monopolist test, and will be too narrow to comprise the relevant market, if customers would respond to the price rise by switching to products outside the set to such an extent that the price increase by the hypothetical monopolist would not be profitable (*Merger Assessment Guidelines*, paragraph 5.2.9). When applying the hypothetical monopolist test, the CMA will normally use a SSNIP of 5 per cent (*Merger Assessment Guidelines*, paragraph 5.2.11).

considered in this investigation, it has also taken into account other evidence from third parties and the Parties' internal documents discussed further below.

109. The boundaries of the relevant product market are generally determined by reference to demand-side substitution.¹⁰⁰ However, the CMA may aggregate several narrow relevant markets into one broader one when firms use the same assets to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products; and the conditions of competition are similar.¹⁰¹
110. In this case, the CMA does not believe the conditions of competition are similar between these different segments. The CMA notes that suppliers' market positions (as evidenced by shares of supply) in blinds, curtains and shutters appear to be materially different. The CMA also notes that window covering retailers purchase the different types of window coverings from different suppliers, that not all of these suppliers supply blinds, shutters and curtains, and therefore that it may not be straightforward to use an existing supply chain to be able to supply different types of product.
111. The CMA recognises that there may be some degree of substitutability between curtains, shutters and blinds. However, the CMA notes that Hunter Douglas's submissions above (eg in paragraph 103) primarily indicates that blinds may impose a possible, albeit limited, constraint on shutters, but not the reverse. The CMA considers that such evidence is not sufficient to move away from the conclusion in [Hunter Douglas/Hillarys](#) (that blinds should be considered separately from shutters and curtains). Therefore, the CMA has not widened the product frame of reference to include curtains and shutters. However, it has considered whether there is evidence to indicate if there are effective out-of-market constraints from curtains and/or shutters on the Parties at paragraphs 213 to 215 below.

M2M versus ready-made blinds

Hunter Douglas's view

112. Hunter Douglas submitted that M2M and ready-made blinds should be aggregated in the same product scope. More specifically, Hunter Douglas submitted that:

¹⁰⁰ [Merger Assessment Guidelines](#), paragraph 5.2.6.

¹⁰¹ [Merger Assessment Guidelines](#), paragraph 5.2.17.

- (a) Both M2M and ready-made products serve a comparable purpose and a wide range of ready-made products are available to fit most window sizes, including all standard window sizes;¹⁰²
 - (b) Consumers can often be convinced to switch between ready-made and M2M supplies, or to upgrade to an in-home service, depending upon price, design and quality. As a result, suppliers of ready-made blinds have fallen to such an extent that many traditional retailers have reduced supplies of ready-made blinds, if not ceased supply altogether;¹⁰³
 - (c) Emergence of online blinds retailers has led to a growth in sales of M2M products at the expense of ready-made products. To support its view, Hunter Douglas refers to the AMA Report, which states that the share of M2M blinds (by value) of the product mix comprising of M2M and ready-made blinds has increased from 72% in 2012 to 77% in 2017, at the expense of ready-made blinds;¹⁰⁴
 - (d) In 2016, Blinds2Go saw increased sales of its wooden blinds as a result of IKEA stopping selling ready-made corded blinds in 2015. Hunter Douglas considers that this is evidence of substitutability between ready-made and M2M blinds;¹⁰⁵ and
 - (e) The price points of individual products sold by the Parties do not diverge significantly from ready-made products.¹⁰⁶
113. In [Hunter Douglas/Hillarys](#), the CMA adopted a product frame of reference for the retail supply of M2M blinds, separate from ready-made blinds on the basis that the majority of third parties did not consider ready-made blinds to be a substitute for M2M blinds.¹⁰⁷ Hunter Douglas submitted that the primary basis for reaching this conclusion was the lack of substitutability between such products at the wholesale level. Hunter Douglas submitted that it was therefore not appropriate for the CMA to impute substitutability at the retail level.

¹⁰² Paragraph 4.16, Submission dated 6 January 2020. Hunter Douglas stated 'In the case of ready-made blinds, these may be adapted to the width of a given window, by cutting a blind down to size, or by fitting them outside the window recess. Further, the drop of a blind can exceed that required for the window without having any significant effect on the presentation of the blind.'

¹⁰³ Paragraph 2.12, Response to the IL.

¹⁰⁴ See the AMA Report, page 54. See also Paragraph 2.14, Response to the IL.

¹⁰⁵ Paragraph 3.51, Response to the IL.

¹⁰⁶ Paragraph 2.16, Response to the IL.

¹⁰⁷ [Hunter Douglas/Hillarys](#), paragraphs 64 to 65.

CMA's assessment

114. The CMA has considered the Parties' internal documents and other evidence submitted by the Parties. The CMA found that:
- (a) Blinds2Go has consistently compared prices with other online M2M suppliers [redacted];¹⁰⁸ and
 - (b) Price comparisons submitted by Hunter Douglas show that online M2M blind prices are substantially higher (eg vs Dunelm) than those for ready-made blinds, for at least two out of three types of blind (ie roller blinds and roman blinds).¹⁰⁹
115. Further, a Blinds2Go internal document mentions M2M blinds as a 'market opportunity' stating that 'there is a significant increase in sales growth of custom-made blinds in recent years due to better affordability and accessibility. This trend of shifting sales from the ready-made blinds sector' and 'the custom made blinds market is increasing at the expense of ready-made'.¹¹⁰
116. Third party views, while mixed, broadly support the position that M2M blinds and ready-made blinds should be considered within separate frames of reference. The majority of blinds retailers that sell both categories of product in the CMA's investigation told the CMA that a SSNIP would not lead consumers to switch from M2M blinds to ready-made blinds. In addition:
- (a) One retailer of M2M blinds provided a survey of consumers which indicated that the fact that a blind is 'made-to-measure' and 'clear instructions for measuring and fitting' are the two most important factors in a consumer's buying decision.¹¹¹ 'Made-to-measure' was also identified by the greatest number of consumers as the single most important factor in their decision (25% of responders selected this option);¹¹²
 - (b) Another retailer of M2M blinds also noted different patterns in customer behaviour in which customers would decide early on whether they want M2M blinds;

¹⁰⁸ Annex 22.3, Price Comparisons, First s109 Notice (Part 2).

¹⁰⁹ Figure 4.2, *Submission of 6 January 2020*. Dunelm's prices for Venetian blinds were similar to online M2M blinds.

¹¹⁰ Project Raise PowerPoint (2015), Annex F2.1, Fifth s109 Notice.

¹¹¹ Third party survey of consumers who had bought or were actively considering buying blinds.

¹¹² The CMA has also considered the GlobalData survey Hunter Douglas submitted in figure 5-4 of its *Submission* dated 6 January 2020. The respondents in that survey appear to be taken from a general consumer panel. The third party survey was conducted with actual customers and interested consumers of that third party, which is active in the same market as Blinds2Go and 247Blinds.

- (c) Another retailer suggested that different customer needs are met by ready-made and M2M items, with the two main reasons for selecting a M2M product being: (i) the complicated size of a window; and (ii) the higher quality of the product; and
- (d) Only a minority of blinds retailers selling both categories considered that consumers would switch from M2M blinds to ready-made blinds in response to a SSNIP.

117. The CMA considered the Parties' submissions, in light of the internal documents and third party evidence as outlined above, concluding that:

- (a) From a demand-side perspective, the CMA does not dispute evidence that sales of online M2M blinds have expanded at the expense of ready-made. However, the CMA believes the reduction in supply of ready-made blinds most likely reflects a longer-term trend of migration from ready-made to M2M blinds. This therefore does not necessarily support the proposition that customers would substitute ready-made blinds for M2M blinds in response to a SSNIP, and hence that M2M blinds is too narrow to be a relevant frame of reference;
- (b) Hunter Douglas's submission in paragraph 112(c) above does not in fact recognise the substitution of M2M blinds with ready-made blinds but rather refers to the expansion of M2M blinds;¹¹³
- (c) In respect of Blinds2Go's increase of sales of its wooden blinds at the same time as IKEA ceased to sell ready-made corded blinds, the CMA does not believe this shows that ready-made blinds constrain online M2M offerings. In particular, it does not show conclusively that online M2M blinds customers would switch to ready-made in response to a SSNIP and, at most, suggest that M2M blinds constrain ready-made blinds; and
- (d) In [Hunter Douglas/Hillarys](#) – contrary to Hunter Douglas's submission which is based on misreading the CMA's decision – the CMA's finding on the product frame of reference was not based on the lack of substitutability at wholesale level. The CMA asked retailers about what drives their customers' sales and the substitutability of the various products and used the retailers' responses as a proxy for consumers' views.¹¹⁴ The CMA therefore considers that the findings in [Hunter Douglas/Hillarys](#) support that there is limited demand side substitution.

¹¹³ The AMA Report also mentions 'acute' price competition for ready-made blinds online and offline, which is reflected in its decline share of product mix (custom-made and ready-made blinds). Many retailers are therefore differentiating by offering more exclusive designs or promoting custom-made blinds with faster turnaround times, page 54.

¹¹⁴ [Hunter Douglas/Hillarys](#), paragraph 51.

118. As concerns supply-side substitution, the CMA's investigation has shown that most retailers of M2M blinds do not sell ready-made blinds. This applies, in particular, to online retailers, which indicate that the conditions of competition for M2M and ready-made blinds are different.
119. As set out above in relation to curtains and shutters (paragraph 105), the CMA does not agree with Hunter Douglas's view that the SSNIP test is a narrow approach to reach a conclusion that ready-made and M2M blinds should be viewed as separate candidate frames of reference. The CMA has taken into account a range of evidence in determining the frame of reference, not just customers' responses to questions about whether they would switch in response to a SSNIP.
120. The CMA therefore concludes that it is not appropriate to widen the product frame of reference to include ready-made blinds. The CMA considered further the constraint from ready-made on online M2M blinds in the competitive assessment section below.

Online versus in-home and in-store

Hunter Douglas's views

121. Hunter Douglas submitted that it is not appropriate to distinguish between the different retail channels (in-home, online and in-store)¹¹⁵ and that:
- (a) Online retailers of M2M blinds, curtains and shutters have disrupted a market previously characterised by low-price ready-made products and M2M blinds sold in-store and in-home at a premium;¹¹⁶
 - (b) Hunter Douglas produced a Hillary's internal document showing an increase in the share of leads for Hillarys customers online from [10-20]% to [60-70]% from 2007 to 2019;¹¹⁷
 - (c) The supply of online M2M blinds has had an impact on Hillarys' traditional in-home service and pricing: according to Hunter Douglas, [redacted];
 - (d) M2M blinds sales gained steadily in value, at the expense of ready-made blinds and in-home providers, as online M2M blinds retailers have been able to reduce their cost base (primarily showrooms and warehousing

¹¹⁵ Paragraph 4.32, Submission dated 6 January 2020.

¹¹⁶ Paragraph 4.27, Submission dated 6 January 2020.

¹¹⁷ Hillarys Lead Data 2007-2019, Fourth s109 Notice, Annex E1.1. This indicated a high brand recognition by consumers of Hillarys. However, at this stage the CMA does not consider this as indicative of a higher propensity to switch from online to the in-home retail channel.

costs), resulting in their products being priced more competitively vis-à-vis ready-made products;

- (e) Online retailers now provide customers with detailed measuring and fitting guides: many customers employ a tradesperson to measure and fit products purchased online instead of obtaining a full-service offering from a traditional retailer.¹¹⁸ However, traditional retailers blur the lines by being increasingly present in the supply of M2M window covering products online, with Next, Dunelm and John Lewis offering M2M blinds and curtains online in addition to their in-store offerings;¹¹⁹
- (f) Hunter Douglas considers that there are a large number of smaller retailers of M2M blinds and curtains and separately for blinds and shutters¹²⁰ offering services in-home or in-store in the UK and these retailers cannot be excluded from the CMA's assessment solely on the basis that they do not have 'click-to-order' functionality which can be added at low cost through open source software such as the Magento e-commerce platform currently used by 247;¹²¹
- (g) Multi-channel retailers have an added advantage in generating sales by being able to direct customers between their in-store and online offers (eg Next offers low-cost M2M blinds measurement services, has one of the most visited websites in the UK, and has a large store portfolio);¹²² and
- (h) Consumers switch between different sales channels and it is therefore necessary to consider the extent to which different sales channels act as a constraint on one another.¹²³

CMA's assessment

122. In *Hunter Douglas/Hillarys*, the CMA adopted, on a cautious basis, separate product frames of reference for the retail supply of M2M blinds by separate sales channel (ie for each of in-home and online). The CMA's conclusion was based on evidence from the Parties' internal documents as well as third parties, indicating that there was a distinction between online and in-home sales. In particular, third party evidence indicated that constraints for online

¹¹⁸ Paragraphs 4.30-4.31, Submission dated 6 January 2020.

¹¹⁹ Paragraph 4.31, Submission dated 6 January 2020.


¹²⁰ There are over 400 retailer members of the British Blinds and Shutters Association, but there will be many more who are not members.

¹²¹ <https://magento.com/>. Magento offers a low-cost, scalable solution for businesses, allowing them to develop bespoke eCommerce platforms for the sale of products.

¹²² Paragraph 2.24, Response to the IL.

¹²³ Paragraph 2.26, Response to the IL.

retailers come from other online retailers rather than from physical stores (ie in-store).¹²⁴

123. In relation to demand-side substitutability, the CMA considered evidence from third parties in this investigation (supporting the conclusion reached in [Hunter Douglas/Hillarys](#)),¹²⁵ which indicated that the vast majority of online retailers did not consider that in-home retailers of M2M interior window coverings competed closely with them.¹²⁶
124. Hunter Douglas submitted the price differential between the Parties' M2M blinds sold online and the prices of M2M blinds sold in-home or in-store by the large retailers is small.¹²⁷ However, the CMA identified price comparisons between Blinds2Go's online M2M blinds with five well-known high street retailers for selected M2M blinds on Blinds2Go's website which indicate that in some instances there are substantial price differences, ranging from 20% to 78%.¹²⁸
125. More generally, Hunter Douglas's internal documents consistently analyse online M2M blinds as a separate retail channel, indicating that the online channel has a different business model than the in-home and in-store channels.¹²⁹ Moreover, as discussed further below (see paragraph 164(a) below), the CMA found that Blinds2Go and 247 monitor  other online M2M retailers.
126. With regard to supply-side substitution, the CMA found that while some in-home retailers (eg Hunter Douglas companies: Hillarys and Thomas Sanderson) are present online, they have no 'click-to-order' functionality or prices on their websites.¹³⁰ Their websites only provide lead generation and for customers to provide contact details and request order samples. In-store retailers are also present online and only a limited number of multi-channel

¹²⁴ [Hunter Douglas/Hillarys](#), paragraphs 72 to 79 and 80 to 84.

¹²⁵ [Hunter Douglas/Hillarys](#), paragraph 78.

¹²⁶ For instance, responses to questions asking retailers to identify their close competitors showed different sets of retailers competing in online as to in-store

¹²⁷ Paragraph 2.14, Response to the IL.

¹²⁸ See www.blinds-2go.co.uk/price-comparison. Blinds2Go states that: 'we offer a made to measure service direct to your door in the simplest way possible. As an added bonus that you can also save up to 60% off High St. prices. To show we haven't simply plucked that number out of thin air, we compared our prices with the 5 main made to measure blinds retailers on the high street. The figures speak for themselves'; 'in almost 25% of cases we were cheaper by 60% or more' (underline added by the CMA).

¹²⁹ For instance, the different service proposition offered by online and in-home retailers is illustrated by the differences in the message of Hillarys and 247 websites: Hillarys' website emphasises its full-service offered: 'Expertly Measured Tailor-made Fitted to perfection. We do it all'. 247 and Blinds2Go emphasises the lower price: 'Finding your perfect blind couldn't be easier, with free samples available across the whole site, low prices of up to 70% off those you'll find on the High St. and fantastic customer services, all as standard' (Blinds2Go website) and 'Here at 247 Blinds, we know that finding picture-perfect blinds to complement your home is a must, which is why we offer only the best, both in terms of the materials used and the price' (247 website) (underline added by the CMA).

¹³⁰ These websites advertise price reductions (eg 'up to 50% off') but seem to display no actual prices.

retailers (online, in-store and in-home) have a click-to-order functionality for M2M blinds. For some of these in-store and in-home retailers, their online presence is only for marketing and lead generation or for the sale of ready-made blinds. The expansion of in-store and in-home retailers online is considered further at paragraphs 233 to 249).

127. In light of this evidence, and consistent with the CMA's findings in *Hunter Douglas/Hillarys*, the CMA does not consider that the different retail channels should be aggregated and has therefore not widened the product scope of the online retail supply of M2M blinds to include in-store or in-home.¹³¹ The CMA has taken the constraint from multi-channel retailers into account in the competitive assessment below (as part of the relevant frame of reference) and has also taken into account constraints from other sales channels (ie in-store and in-home) as well as the extent the large in-store and in-home retailers may expand into the online M2M blinds channel in its competitive assessment below.

Vertically related products: the wholesale supply of M2M blinds for online retailers

128. As noted above, Hunter Douglas is active at the wholesale level in the supply of assembled blinds to retailers, including online retailers.
129. In *Hunter Douglas/Hillarys*, the CMA assessed wholesale markets for the supply of M2M blinds. However, it submitted that, whilst it may be possible to identify broader product markets at the wholesale level, the precise definition of the relevant market can be left open at the wholesale level, as no competitive concerns arose even on the narrowest product market.¹³²
130. Hunter Douglas submitted that it wholesales the following types of assembled blinds: (i) roller blinds; (ii) pleated blinds; (iii) aluminium venetian blinds; (iv) wooden venetian blinds (where the material is wood or faux wood); (v) vertical blinds; (vi) roman blinds; and (vii) other blinds (which includes a range of niche blinds).¹³³ Hunter Douglas's wholesale customers include 247, which it sells blinds to through its subsidiaries [X]. In addition, 247 is also supplied with assembled blinds by Hunter Douglas's wholesale competitors [X].
131. Many M2M blinds retailers (both online and in-store) retailers told the CMA that they buy at least some assembled blinds (amongst other products) from Hunter Douglas's companies.
132. The CMA has assessed the effect of the Transactions on the supply of assembled blinds to retailers and has considered the supply to online retailers

¹³¹ *Hunter Douglas/Hillarys*, paragraphs 80 to 84.

¹³² *Hunter Douglas/Hillarys*, paragraph 78.

¹³³ *Hunter Douglas/Hillarys*, paragraph 78.

in particular since the Transactions concerned the vertical relationship between Hunter Douglas and Blinds2Go and 247 as online retailers.

133. However, the CMA has not needed to conclude on this frame of reference since, on the basis of any plausible frame of reference, no competitive concern could arise as a result of vertical effects.

Conclusion on product frame of reference

134. For the reasons set out above, the CMA has considered the impact of the Transactions in the following product frames of reference:

- (a) Online retail supply of M2M blinds; and
- (b) Wholesale supply of assembled M2M blinds to retailers, in particular online retailers.

Geographic frame of reference

Retail supply online of M2M blinds

135. In [Hunter Douglas/Hillarys](#), the CMA assessed the effect of the retail supply online of M2M blinds (and shutters) on a national basis.¹³⁴
136. Hunter Douglas submitted that the effects of the Transactions should also be assessed on a national basis as there are no distinct competitive conditions in any part of the UK. However, Hunter Douglas submitted that it is important to take account in the competitive assessment of constraints arising from window covering retail sales originating outside the UK (eg by AliExpress), since such sales exercise an increasingly important constraint on the activities of the Parties in the retail markets.¹³⁵
137. The CMA notes that, at the retail level, 247 supplies blinds, shutters and curtains predominantly in the UK.¹³⁶ Further, the CMA has received no evidence that suggests that another geographic frame of reference for the online retail supply of M2M blinds would be more appropriate. The CMA will take into account in the competitive assessment any such non-UK constraints,

¹³⁴ [Hunter Douglas/Hillarys](#), paragraph 99. See also paragraphs 90 to 98.

¹³⁵ Submission of 6 January 2020, paragraph 4.36

¹³⁶ The Dutch website [247raamdecoratie.nl](#) appears to be now branded as Tuiss (a Hunter Douglas brand) the URL redirects to [raamdecoratievantuiss.nl](#). The French website [stores247.fr](#) is shut. 247 generated overseas sales of approximately [X] for the period ended 19 February 2019. See annex A8.2, *247 Accounts FYE 2019*, Hunter Douglas response to the Enquiry Letter (Part 2).

however it notes that it has received no evidence indicating that such sales significantly constrain the Parties.

Wholesale supply of M2M blinds to retailers

138. In *Hunter Douglas/Faber and Benthin*, the OFT found that the vast majority of wholesalers/fabricators were UK-based and supply only to UK retailers.¹³⁷ In *Hunter Douglas/Hillarys*, the Parties suggested that imports had increased significantly since 2010 and the market was now global. However, third parties indicated that M2M blinds suppliers were predominantly UK-based and small retailers in particular stated that they only used UK suppliers for M2M blinds. Therefore, in that case, the CMA adopted the UK as the appropriate geographic frame of reference for the wholesale supply of blinds and shutters on a cautious basis.¹³⁸
139. In this case, Hunter Douglas submitted that the relevant geographic market is global, with many wholesale suppliers originating outside of the UK. Hunter Douglas itself wholesales many of its products to retailers in the UK from outside the territory.¹³⁹ Further, Hunter Douglas stated that much of UK blinds manufacturing consists of adjusting imported assembled blinds, rather than the full manufacturing cycle.¹⁴⁰
140. As part of this investigation, most third parties have indicated that the majority of their suppliers are based in the UK. In particular, the significant online retailers of M2M blinds identified by the Parties source most of their blinds from the UK.
141. The CMA also notes that wholesale suppliers from outside the UK may not be an effective alternative to online M2M blinds retailers. For instance, some M2M retailers told the CMA that they normally only source a fully assembled blind that fulfills the customer requirements after customers provide their measurements and select colour, style and materials for the blind and that purchasing these M2M blinds from outside the UK may lead to longer delivery times.

Conclusion on geographic scope

142. For the reasons set out above, the CMA has considered the impact of the Transactions in the UK:

¹³⁷ *Hunter Douglas/Faber and Benthin*, paragraph 28.

¹³⁸ *Hunter Douglas/Hillarys*, paragraphs 87 and 89.

¹³⁹ Paragraphs 4.41-4.43, Submission dated 6 January 2020.

¹⁴⁰ Paragraph 42-43, Submission dated 6 January 2020.

- (a) Online retail supply of M2M blinds in the UK; and
- (b) Wholesale supply of M2M blinds to online retailers in the UK.

Conclusion on frame of reference

143. For the reasons set out above, the CMA has considered the impact of the Transactions in the following frames of reference:

- (a) Online retail supply of M2M blinds in the UK; and
- (b) Wholesale supply of M2M blinds to online retailers in the UK.

Competitive assessment

144. The CMA has considered two theories of harm in relation to the 2013 Transaction and 2019 Transaction, namely:

- (a) Horizontal unilateral effects in the online retail supply of M2M blinds in the UK from the loss of competition between Hunter Douglas and 247; and
- (b) Vertical effects resulting from input foreclosure of Hunter Douglas's wholesale supply of assembled M2M blinds to downstream rivals in the online retail supply of M2M blinds in the UK.

Horizontal unilateral effects

145. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹⁴¹ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Transactions have resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the online retail supply of M2M blinds.
146. In particular, the CMA has considered whether: (i) Hunter Douglas's ability to exercise material influence may reduce the degree of competition between Hunter Douglas and 247 (as Hunter Douglas's interests may not be fully aligned with those of the 247 Founding Shareholders) and result in increased prices, lower quality, a reduced range of services and/or reduced innovation; and (ii) the move to a controlling interest as a result of the 2019 Transaction

¹⁴¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

may further reduce competition by removing 247 entirely as a competitor and worsen these concerns.

147. In order to assess the likelihood of each of the Transactions resulting in unilateral effects in the online retail supply of M2M blinds in the UK, the CMA considered:
- (a) Shares of supply;
 - (b) Closeness of competition between the Parties;
 - (c) Competitive constraints;
 - (d) Evidence on the effects of the 2013 Transaction; and
 - (e) Evidence on the effects of the 2019 Transaction.

Shares of supply

148. The CMA has assessed the shares of supply based on data provided by the Parties and third parties active in this market.
149. Hunter Douglas submitted that the Parties' combined share of supply in the online retail supply of M2M blinds in the UK, by revenue, was around [40-50]% with a [5-10]% increment.¹⁴² Hunter Douglas considers that the total size of the online M2M blinds market in the UK is higher than that estimated by the CMA because the CMA has not included some small online M2M blind retailers. Hunter Douglas further submitted that the addition of 247's turnover of £15.5 million has no material effect on the market structure, even on the CMA's reduced market size figures. Additionally, Hunter Douglas submitted that there are five other 'sizeable' dedicated online players (four with a share of less than 5% and one with a share larger than 247 (ie Interior Goods Direct), retailers selling via Amazon and eBay (which represent a share of 5-10%), and multi-channel retailers such as Next and John Lewis. Hunter Douglas submitted that after the Transactions the Parties continue to face a large number of rivals in a market where prices are highly transparent, online retailers' branding is irrelevant, and multi-channel retailers have strong branding advantages.
150. The CMA calculated the shares of supply of the Parties and their competitors based on 2019 actual sales data. The CMA found that the sales of the Parties' competitors were, in most cases, significantly lower than the Parties had

¹⁴² Paragraph 5.11, Submission dated 6 January 2020. Hunter Douglas's estimate was based on a combination of sales data provided by blinds suppliers, publicly available data and internal estimates. Hunter Douglas noted that its shares of supply were not precise, by merely indicative.

estimated (see below).¹⁴³ The CMA therefore considers that Hunter Douglas's estimates are not an accurate representation of the total size of market and understate the Parties' shares.¹⁴⁴ The CMA included in its estimates all the online M2M retailers that are mentioned in the Parties internal documents and that were identified by third parties as competitors in the market.¹⁴⁵

Table 1: Shares of supply estimates in the online retail supply of M2M blinds in the UK (2019)

Online M2M blinds sales	[(£m)]	(%)
Hunter Douglas (B2G)	[£]	[50-60]
247	[£]	[5-10]
Combined	[£]	[60-70]
Interior Goods Direct (Blinds Direct)	[£]	[10-20]
Swift Direct Blinds	[£]	[0-5]
Bloc Blinds	[£]	[0-5]
Wilson's Online Retail	[£]	[0-5]
Next	[£]	[0-5]
Dunelm (incl curtains) ¹⁴⁶	[£]	[0-5]
MakeMyBlinds	[£]	[0-5]
Blinds4UK	[£]	[0-5]
John Lewis	[£]	[0-5]
Concept Blinds	[£]	[0-5]
Amazon Marketplace (incl readymade)	[£]	[5-10]
eBay (incl readymade)	[£]	[5-10]

¹⁴³ Hunter Douglas noted that for the majority of competitors no publicly available information on M2M blinds online sales is available. However, the CMA did not consider that the assumptions used by Hunter Douglas to reach their estimate was reliable.

¹⁴⁴ The CMA considers that its own share of supply estimate may be conservative and understate the Parties' share of supply because it includes the sales of all types of blinds sold through online market-places (Amazon and eBay), as the data the CMA received did not differentiate between online market-place sales of M2M and ready-made. Third parties indicated that very few M2M blinds are sold through online market-places due to the limited versatility of these webstores.

¹⁴⁵ Even assuming that there may be other smaller online M2M blind retailers (which in any case would not impose any relevant constraint on the Parties), accounting at most for additional £35 million in sales (as submitted by Hunter Douglas), the combined share of the Parties in the online retail supply of M2M blinds will still be high ([45-55])%.

¹⁴⁶ The CMA notes that Dunelm exited the online market for the online retail supply of M2M blinds.

Total	[X]	100
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Source: CMA and third parties

151. By way of summary, the CMA considers that, based on both Hunter Douglas's and the CMA's estimates, the Parties' combined share of supply is high and raises *prima facie* significant competition concerns. Further, Blinds2Go is the largest and 247 the third largest online retail supplier of M2M in the UK, with a limited number of other competitors. As shown in Table 1, the CMA estimates that the Parties' combined share of online retail supply of M2M blinds in the UK is [60-70]%, with an increment of [5-10]% brought about by the Transactions. Further, the CMA identified only one further sizeable online retailer of M2M blinds in the UK, ie Interior Goods Direct with a share of [10-20]%. There are some smaller competitors, such as Swift Direct Blinds (**Swift**), Wilsons Online Retail (**Wilson's**), Bloc Blinds, MakeMyBlinds and Next (all of which have a share of less than [0-5]%). Even if, as submitted by the Parties, there are other smaller M2M blinds retailers, these would be extremely small competitors (with shares of around 1% or below based on the Parties' estimates).
152. The CMA therefore considers that the Parties' combined share of supply is high and raises *prima facie* significant competition concerns.

Closeness of competition

153. Suppliers of online M2M blinds compete on price, the quality of their website (for example how easy it is to use), the quality and range of blinds supplied and the service provided (for example, reliability and speed of dispatch and how well returns are dealt with). They also compete to obtain new customers, for example through online advertising and other marketing activities.
154. The CMA examined closeness of competition between the Parties and considered within its assessment:
- (a) Similarity of the Parties' service proposition;
 - (b) The Parties' online presence;
 - (c) Evidence from internal documents, including evidence on whether the Parties monitor each other; and
 - (d) Third party views on closeness of competition.

Similarity of the Parties' service proposition

155. Hunter Douglas submitted that its service proposition was similar to other online competitors and that the Parties are not the closest or unique competitors. To support this position, Hunter Douglas submitted that blinds are commodotised products sold through similar websites,¹⁴⁷ that 247 holds no unique manufacturing or distribution facilities, intellectual property, or supply chain relationships and that 247's website was based on open source software.¹⁴⁸
156. The CMA found that the Parties' range of products and service are very similar. Overall, the Parties' product and service proposition is very similar. Both Parties offer the same types of blinds (ie roller blinds, wooden blinds, vertical blinds, roman blinds, venetian blinds, day and night blinds, conservatory blinds, and Velux blinds) through the online sales channel. The Parties also adopt a very similar business model and approach to internet advertising.
157. Hunter Douglas submitted that Blinds2Go's price changes were not more similar to those of 247 than any of the other retailers it monitors (see paragraphs 174 below), which, Hunter Douglas submitted, suggests that Blinds2Go and 247 are not 'particularly close' rivals tracking each other's prices (particularly in 2018 and 2019).¹⁴⁹ The CMA considered that it was difficult to draw inferences from this analysis as it only compared the direction of price changes between two dates a quarter of a year apart. In any event, the CMA considered that this evidence was consistent with the Parties being close competitors.¹⁵⁰
158. The CMA agrees that Blinds2Go and 247 are not 'unique' competitors because there are other online retailers of M2M blinds (which the CMA has considered in the discussion of competitive constraints below). Nevertheless, the CMA believes that the similarity of the Parties' service proposition supports the position that they are close competitors.

¹⁴⁷ For example, Blinds2Go's faux wood blinds appear similar across the other four competitors that should in the top four adverts displayed by Google. Likewise, the white blackout roller blind shows near identical products sold by the top four adverts for online M2M blinds retailers.

¹⁴⁸ Paragraphs 3.9, Response to the IL.

¹⁴⁹ Figure 3.4 Share of coinciding price changes [0-1], Response to the IL. Source: AlixPartners analysis of Blinds2Go data.

¹⁵⁰ The CMA notes that it is looking at 'closeness', rather than 'unique' or 'particular' closeness. It further notes that it deals with the constraints exercised by other competitors in the relevant section below.

Online presence

159. Both Parties appear to have a significant online marketing presence. Hunter Douglas submitted that: (i) the majority of Blinds2Go's advertising budget is invested in PPC online;¹⁵¹ (ii) that paid search advertising accounts for approximately [X] of 247's marketing budget; and (iii) this spend is not large in relation to its total revenues and reflects a similar percentage spend as Blinds2Go.¹⁵² Further, Hunter Douglas submitted that spending on Google is not evidence of its competitive strength and closeness of competition as retailers compete on a PPC basis and not as a result of their total spend.¹⁵³ Likewise, the similar share of revenues spent on PPC advertising indicated a lack of competitive advantage as a result of scale.
160. The Parties' internal documents indicate that advertising in search engines is a very important source of business for both Parties.¹⁵⁴ This was also supported by third parties who indicated that leads are generated via search engines, primarily Google, and a retailer's position in these search results is a major factor in attracting online customers. Likewise, the European Commission's findings in Google Search (Shopping) indicated that users typically only look at the first results page and in particular only at the first three to five search results.¹⁵⁵
161. The CMA has also considered the position of the Parties' websites in Google's search results for 'blinds', based on a simple analysis of rankings by both the CMA and Hunter Douglas.¹⁵⁶ The CMA found that the Parties appear frequently and rank prominently in paid-for search, organic search and Google shopping results. The CMA considered that the frequency and prominence of the Parties suggested that their competitive significance is greater than their shares of supply might suggest. The CMA believes this indicates that the Parties are competing closely for 'clicks' on Google UK, which is consistent with third party submissions.
162. Third parties told the CMA of the difficulties they face in appearing in prominent positions in search results in order to compete effectively online. Further, one third party noted that having multiple domains or brands, like Hunter Douglas, makes it easier for M2M blind retailers to appear more

¹⁵¹ Hunter Douglas's response to question 11(a), Second s109 Notice.

¹⁵² Hunter Douglas's response to question 11(a), First s109 Notice.

¹⁵³ Paragraph 3.11, Response to the IL.

¹⁵⁴ See, for example, Annex A23.1, Blinds2Go Management Spreadsheet 2017 and 2018, First s109 Notice and Annex 15.13, 247 Monthly Site Performance Report January 2019, First s109 Notice.

¹⁵⁵ [European Commission \(2017\) AT.39740 - Google Search \(Shopping\)](#), page 124.

¹⁵⁶ Both the CMA and Hunter Douglas assessed rankings on a single day in February 2020. The CMA notes that external factors may affect search results.

prominently in online search engines than single-brand/domain M2M blind retailers.

163. The CMA therefore considers that the online presence of the Parties, and alternative suppliers, broadly supports the position that the Parties would (absent the Transactions) be particularly close competitors online, with only very few other competitors remaining to compete effectively.

Internal documents

164. The CMA also considered the extent to which the Parties view each other as close competitors based on their internal documents. Overall, the CMA found that these documents generally supported the position that the Parties are close competitors, with Blinds2Go as the market leader and 247 holding a significant share of the market. For example:
- (a) Internal documents from Blinds2Go and 247 show that they monitor each other's prices.¹⁵⁷ As discussed further below (under competitive constraints) Blinds2Go also monitors a number of other online M2M blinds retailers alongside 247, whilst 247 submitted evidence which showed that it compared prices [redacted];¹⁵⁸
 - (b) One internal document from Hunter Douglas, discussing the rationale behind the Blinds2Go acquisition, referred to 247 as [redacted]. The same document also indicates that Blinds2Go is the market leader, [redacted]. This document further indicated that the acquisition of both Blinds2Go and 247 would give Hunter Douglas a 'truly leading position' in the UK and [redacted];¹⁵⁹ and
 - (c) Another internal document discussing the rationale behind the acquisition of Blinds2Go indicated that Hunter Douglas considered 247 and Blinds2Go as close competitors, as CEO [redacted] compared metrics from 247 with those of Blinds2Go.¹⁶⁰ The same document also described the fact that the 247 and Blinds2Go brands have similar colours as being 'blatant and confusing'.
165. Based on the evidence from internal documents, the CMA considers that the Parties would have been close competitors absent the Transactions, alongside a very small number of other online M2M blinds retailers (see paragraphs 176 to 177 below). The difference in size between Blinds2Go and 247 is not inconsistent with the finding that they compete closely, as indicated

¹⁵⁷ Annex A22.3. *Price Comparisons*, Fifth s109 Notice.

¹⁵⁸ Hunter Douglas's response to question 4 and annex 8, Second s109 Notice.

¹⁵⁹ Annex F.1.1, *Acquisition of Blinds2Go Rationale*, Fifth s109 Notice.

¹⁶⁰ Annex G2.2, *Email: TV Advertising (Nov 2016)*, Fifth s109 Notice.

in the internal documents. The 2013 Transaction reduced the extent of competition between the Parties owing to Hunter Douglas's ability to exercise material influence and the 2019 Transaction removed competition between the Parties entirely as the constraints posed by the 247 Founding Shareholders disappeared.

Third party views

166. The CMA also considered third party views on closeness of competition between the Parties, absent the Transactions.¹⁶¹
167. All online retailers of M2M blinds that participated in the CMA's investigation indicated that the Parties would be close competitors in the online retail supply of M2M blinds. For example, one competitor noted that it considered the Parties as very close competitors given that they supply similar product ranges and have very high customer awareness about one another. The only third parties who had no views on the Parties' closeness were multi-channel and in-store retailers (with limited online activities in M2M blinds), which may imply that these competitors were less likely to constrain the Parties (see below).
168. As mentioned above, the majority of online retailers of M2M blinds also considered that the features of the online advertising market would have contributed to the Parties' closeness of competition. These third parties believed that due to the position of the Parties in search results, they would attract a large share of traffic and would therefore compete more closely with each other than with providers that do not have similarly prominent positions (see also section discussing 'online presence' at paragraph 159 above).¹⁶²

CMA's conclusion on closeness of competition

169. For the reasons set out above, while the CMA recognised that 247 was not necessarily unique or Blinds2Go's closest competitor, it found that the Parties, absent the Transactions, would have been close competitors in the online supply of M2M blinds in the UK. In particular, the 2013 Transaction reduced the extent of competition between the Parties owing to Hunter Douglas's ability to exercise material influence and the 2019 Transaction removed competition between the Parties entirely as the constraints posed by the 247 Founding Shareholders disappeared.

¹⁶¹ The CMA has found that some third parties were previously not aware of the Transactions and assumed that the Parties were still competitors.

¹⁶² For example, one third party stated that 'whenever you go online, the main businesses that come up are Hillarys, blinds 2 go and 24/7, and they are dominant in the marketplace'.

Competitive constraints

170. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA therefore considered whether there are alternative suppliers which would provide a competitive constraint on the combined entity. Hunter Douglas named the following as effective competitors to Blinds2Go and 247:

- (a) Online retailers of M2M blinds: Interior Goods Direct, Swift, Wilsons and Blinds4UK, as well as a large number of smaller online retailers;
- (b) Multi-channel retailers such as Next, Dunelm and John Lewis; and
- (c) Online marketplaces: Amazon, sellers on Amazon, and sellers on eBay.

171. The CMA assessed the constraints from each of these alternatives by taking into consideration:

- (a) Similarity of service proposition;
- (b) Evidence of monitoring;
- (c) Evidence from internal documents; and
- (d) Third party views on other online M2M blinds retailers.

Pure online M2M blinds retailers

- *Similarity of service proposition*

172. The CMA agrees with the Parties submissions (outlined at paragraph 158 above) that the online propositions of Blinds2Go, 247 and other pure online M2M blinds retailers are very similar in terms of available products as well as in terms of service. Furthermore, the CMA's investigation showed that online retailers of M2M blinds compete for customers in a similar way, ie they compete online, mainly in online search, for 'clicks' by consumers.

- *Online presence*

173. However, the CMA notes that the position of these pure online competitors in online searches affects the extent to which these competitors constrain the parties. None of the smaller online M2M blinds retailers seem to appear with particular frequency in online search results, within either the eight paid positions or in organic results. As a result (given that, as described above in paragraph 160, advertising in search engines is a very important source of business for suppliers), the CMA considers that this is likely to limit the

constraint that these smaller suppliers are liable to exercise on 247 and Blinds2Go.

- *Competitors monitored by Hunter Douglas*

174. Blinds2Go regularly monitors the prices of a small number of online M2M blinds suppliers. In addition to 247, this included [REDACTED].¹⁶³ The evidence available to the CMA suggested that 247 monitors the prices of [REDACTED] and [REDACTED].

175. While Hunter Douglas submitted that Blinds2Go and 247 also monitored other competitors more informally,¹⁶⁴ the CMA found little evidence to support this position.¹⁶⁵

- *Internal documents*

176. 247's internal documents indicated that most other online M2M blinds retailers do not impose a significant competitive constraint on 247. The only other competitor referred to consistently in 247's internal documents was [REDACTED], which 247 referred to in some instances as a 'more aggressive' competitor.¹⁶⁶ In one document, 247 is dismissive about the constraint imposed by other online M2M blinds retailers by stating: 'One or two minor historical competitors who recently reared their heads have now disappeared again. [...] [REDACTED] new site is still around. We continue to monitor all competitors very closely but at the moment these are both minor annoyances rather than significant impacts'.¹⁶⁷

177. Hunter Douglas submitted that the market in 2017 (when these documents were prepared) is not representative of competitive conditions in 2020, particularly noting the expansion of Interior Goods Direct and MakeMyBlinds. While the CMA does not dispute that Interior Goods Direct is a material competitor to the Parties, the available evidence does not support the position that MakeMyBlinds is a meaningful competitive constraint. In particular, the CMA did not receive any other evidence from internal documents or third parties to suggest that MakeMyBlinds effectively constrains the Parties (apart from one third party noting that it monitors MakeMyBlinds). The CMA also notes that, in the Issues Meeting with the CMA, the representative from Hunter Douglas stated: "I don't know much about them to be honest". The

¹⁶³ Blinds2Go also monitors two suppliers specialised in motorised blinds ([REDACTED]). The CMA considered these suppliers exerted a limited competitive constraint as they supplied only a small proportion of the total M2M blinds range.

¹⁶⁴ Paragraph 3.18, Response to the IL.

¹⁶⁵ The CMA requested Blinds2Go to conduct a document search which only yielded a very small number of documents [5] showing some benchmarking with respect to [REDACTED], [REDACTED] and [REDACTED] in addition to 247 and other online retailers. See also paragraphs 195 to 197 below.

¹⁶⁶ See *Sky Management Comments September 2018*, Annex 25.22, Hunter Douglas's response to the Enquiry Letter (Part 2).

¹⁶⁷ *Sky Management Comments June 2017*, Annex A25.7, Hunter Douglas's response to the Enquiry Letter (Part 2).

CMA considers that this statement is difficult to reconcile with the position that MakeMyBlinds is a significant competitive constraint on the Parties.

178. Hunter Douglas also submitted that Blinds2Go's management accounts show that its gross profit margins remained relatively stable over the period from 2015 to 2019, which would, in turn, indicate that it does not have market power at present. The CMA notes that a number of different factors are likely to drive the gross profit margins of Blinds2Go and it is therefore not possible, on the basis of the data provided by Hunter Douglas, to draw robust conclusions about how these data reflect the competitive constraints faced by Blinds2Go. The CMA notes, in addition, that Hunter Douglas exercised material influence over 247, which (for the reasons set out elsewhere in this decision) would otherwise have been Blinds2Go's most significant competitors, for the entire period covered by the data.

- *Third party views*

179. Nearly all pure online M2M blinds retailers identified only other pure online M2M blinds retailers with a significant market presence (ie material market shares) as the strongest competitors to the Parties (and to each other).¹⁶⁸ Some of these retailers also indicated that they also monitored certain other companies, but that these were generally not considered as strong competitors. The CMA notes that these additional companies were also not listed by the Parties and other online M2M blinds retailers as their main competitors, which implies that they are not perceived as significant competitors.¹⁶⁹

180. Third parties repeatedly highlighted the Parties' position in online advertising (see paragraphs 166 to 168) as a major contributing factor to the largest online retailers competing closely with each other and the inability of smaller online retailers to compete effectively. As set out in the section above: (i) the structure of the online advertising market leads to a significant reliance of retailers on search advertising on Google; and (ii) consumer behaviour leads to the top positions in search results attracting the largest share of traffic.

181. Online retailers explained that these factors taken together favour large players and create barriers to entry and expansion (as described further below).

¹⁶⁸ When prompted, several third parties generally only considered Interior Blinds Direct to belong to the larger players (ie Blinds2Go and 247). Swift, MakeMyBlinds and WebBlinds (a Hunter Douglas company) received single mentions while smaller online retailers were not identified as effective competitors.

¹⁶⁹ Annex 1 and Annex 2, Submission dated 6 January 2020.

182. The CMA therefore considered that the evidence provided by third parties broadly supports the position that the Parties only face significant competitive constraints from larger online retailers of M2M blinds.

Conclusion on pure online M2M blinds retailers

183. For the reasons set out above, the CMA considers that Interior Goods Direct is the main constraint on the Parties and that Swift and other smaller online M2M blinds retailers identified in Table 1 constrain the Parties, but to a less significant degree. Although Blinds2Go regularly monitors the prices of some smaller competitors as well as 247 and [X] (see paragraph 174), the CMA considers these smaller competitors are less important as competitive constraints for the reasons explained at paragraph 173.
184. There is no evidence indicating that the small online M2M blinds retailers (which were not identified by the Parties and other online M2M blinds retailers as their main competitors) constrain the Parties to any significant extent.

Multi-channel M2M blinds retailers

- *Similarity of service proposition*

185. Several multi-channel retailers of M2M blinds (ie in particular, bricks-and-mortar retailers which also operate an online store) submitted that there is a material difference in their product range to that offered by the Parties (and other pure online retailers of M2M blinds). For example, in 2017 Blinds2Go had over 5100 Stock-Keeping-Units (**SKUs**), whereas in 2019 [X] had much less.¹⁷⁰
186. These multi-channel M2M blinds retailers confirmed that their webstores are not currently versatile enough to offer larger ranges of highly bespoke products, such as M2M blinds.
187. For instance, one multi-channel retailer told the CMA that whilst it sold some types of blinds online it was still not able to provide a full offering in this channel.
188. Another M2M blinds retailer that currently is not offering M2M blinds online (although it has done it in the past) explained that it intends to re-enter into this segment. One multi-channel retailer stated that it has future plans to make

¹⁷⁰ *Project Raise PowerPoint (2015)*, Annex F2.1, Fifth s109 Notice.

The CMA estimates based on the information available on their websites that [X] has around [400-500] online M2M blinds products, [X] has around [800-900] online M2M blinds products, and [X] has no online M2M blinds products (retrieved 19/02/2020).

changes to its webstore and offer more product lines. The same retailer noted, however, that it does not forecast any material increase in its sales of M2M blinds in the foreseeable future.

189. The existing competitive presence of multi-channel retailers of M2M blinds, and the constraint that they impose on the Parties at present, is therefore very limited. Moreover, in light of the evidence received from multi-channel M2M blinds retailers on the plans for their online businesses, the CMA considers, as set out in detail in the Entry and Expansion section below, that any entry or expansion, in particular by multi-channel retailers, will not be sufficient to mitigate a realistic prospect of an SLC.

- *Online presence*

190. Although these multi-channel retailers have a strong brand and online presence (in general), they do not seem to appear with particular frequency in online search results with regard to blinds, within either the eight paid positions or in organic results.¹⁷¹ As a result (given that, as described above, advertising in search engines is a very important source of business for suppliers), the CMA considers that this is likely to limit the constraint that these smaller suppliers are liable to exercise on the Parties.

- *Third party views*

191. The competitors identified by multi-channel M2M blinds retailers were different to those identified by pure online M2M blinds retailers and included both online and in-store sales. In particular, multi-channel M2M blinds retailers generally identified other multi-channel M2M retailers and other Hunter Douglas companies (such as Hillarys or Thomas Sanderson) as competitors, together with the Parties. One multi-channel M2M blinds retailer also identified Interior Goods Direct and the Parties as competitors.

192. Some multi-channel retailers indicated to the CMA that they were not significant competitors to either of the Parties due to their limited or non-existent online presence in M2M blinds.

193. One multi-channel retailer told the CMA that it appears in a relatively low position in the organic search results on Google for the search term 'blinds' and received only a limited number of site visits through that search term. A survey carried out by this retailer, which involved surveying its in-store customers, showed that the most frequently visited retailers by these

¹⁷¹ With the exception of Next, in some instances.

customers were to other multi-channel retailers, and that only a small percentage had visited a pure online window coverings retailer.

194. Only one third party considered that high street retailers with well-known brands may have some advantages in online advertising because of brand recognition.

- *Internal documents and monitoring*

195. Hunter Douglas submitted that Blinds2Go monitors channels such as in-store retailers, but on a more informal basis (and therefore that these suppliers would not be expected to appear extensively in internal documents).¹⁷² Notwithstanding the lack of evidence provided to substantiate this position, the CMA notes that such 'informal' monitoring would tend to suggest that retailers in such channels impose a less significant constraint than the players consistently referenced in internal documents.

196. Hunter Douglas explained that Blinds2Go would conduct frequent visits to the bricks-and-mortar shops of its multi-channel competitors such as Next, Dunelm, IKEA and John Lewis to monitor prices, discounting and product ranges. However, no reports were produced from those visits and, as mentioned above in paragraphs 174 to 175, multi-channel M2M blinds retailers do not appear consistently in Blinds2Go's formalised price monitoring or are only monitored regarding a narrow range of M2M blinds.

197. The Parties' internal documents generally do not appear to refer to multi-channel M2M blinds retailers as imposing any meaningful competitive constraint on the Parties (although, as noted above, [REDACTED]).

Conclusion on multi-channel M2M blinds retailers

198. Based on the evidence set out above, the CMA considers that multi-channel M2M blinds retailers do not impose a significant constraint on the Parties. The CMA considers that these multi-channel retailers are more distant competitors to the Parties because of the differences in their business model and commercial focus, which have less focus on the M2M blinds product category, and the different functionality of their webstores. The CMA notes that these suppliers are significantly less prominent in online search results.

199. The CMA therefore considers that multi-channel M2M blinds retailers only exert very limited constraints on the merged Parties and are not an effective alternative for most of the Parties' customers.

¹⁷² See Annex A22.3, First s109 Notice (Part 2).

Marketplace platforms such as Amazon and eBay

200. Hunter Douglas submitted that a large number (circa 50) of smaller retailers operate through online marketplaces such as Amazon and eBay, with a combined market share of [10-20]% and [0-5]% respectively. (The CMA notes that its own estimates of these suppliers' shares, which also include sales of ready-made blinds (and therefore overstate their position within this segment), are lower than those provided by Hunter Douglas.)¹⁷³ Hunter Douglas further submitted that since the CMA's decision in *Hunter Douglas/Hillarys*, Amazon and eBay have grown in relevance and are exhibiting a stronger competitive constraint on the Parties.¹⁷⁴ In particular, Hunter Douglas identified about 50 sellers of M2M blinds on Amazon and/or eBay, including several established retailers, such as Swift, suggesting that Google is not the only route to market.
201. Hunter Douglas further submitted that the cost of selling through Amazon and eBay (with a commission rate of 20%) is not dissimilar to the margins from selling through Google and other search engines, as PPC advertising spend amounts to a margin reduction of around [10-20]%. Further, the ready-made products listed on Amazon and eBay are a closer alternative than an initial view would suggest. Ready-made options have a small size increment (so will, in practice, already be very close to customer's particular needs), whilst other sellers can also fulfill M2M orders on specific request (for example by submitting requests through the 'customer questions & answers' functionality on Amazon).
202. In response to the Parties' submissions, the CMA notes that difference of 7 to 8% in the retail margin is significant. This is confirmed by comments from competitors who consider that selling on Amazon or eBay would not be a viable option given the difficulties already faced in competing effectively with the three large online retailers. Neither Hunter Douglas nor 247 currently sell through marketplace platforms, Further, for the reasons set out above, the CMA does not consider that ready-made blinds are, in general, a strong constraint on online M2M blinds (and, similarly, contacting ready-made manufacturers on an ad hoc basis through website Q&A is not likely to constrain the Parties to any material extent). The CMA notes, in any case, that it has taken account of the constraint posed by Amazon and eBay (with the size of their shares likely being overstated) in its share of supply estimates, and that the Parties' combined share of supply is very large (ie [60-70]%) and the increment brought about by the Transactions is significant (ie [5-10]%) even on this basis.

¹⁷³ Paragraph 5.24, Submission dated 6 January 2020.

¹⁷⁴ *Hunter Douglas/Hillarys*, paragraph 153(a), where the CMA found evidence of online retailers selling through eBay and Amazon.

203. The CMA has not received views from third parties suggesting that marketplace platforms offer any significant constraint on the Parties. Although three competitors stated that Amazon and eBay were certainly 'in the mix' and offered 'a possible route', these competitors (including those who sold through Amazon and eBay) submitted that the marketplaces were used mainly for ready-made blinds. This view was supported by other competitors, who stated that Amazon and eBay 'don't really play a role' and that they did not consider Amazon to sell M2M blinds online.
204. One competitor that works with Amazon and eBay to sell its ready-made products considered that these marketplace platforms mainly 'compete with Dunelm, Argos and B&Q'. Similarly, two other competitors use Amazon and eBay to sell ready-made products and had looked at selling old stock through Amazon and eBay but considered that the margins were not worth it due to high commission rates.
205. For the reasons set out above, the CMA considers that marketplace platforms do not impose any meaningful constraint on the Parties in the online retail supply of M2M blinds.

Out of market constraints

206. Hunter Douglas submitted that the Parties will continue to be constrained from outside the market, ie those products outside of the Frame of Reference:
- (a) Curtains and/or shutters;
 - (b) Ready-made blinds; and
 - (c) In-store and in-home retailers.
- *Curtains and/or shutters*
207. Hunter Douglas submitted that evidence of substitutability between curtains and/or shutters and blinds (see paragraph 103) also supported the argument that it was an effective out of market constraint on the online M2M and that this should be properly taken into account.
208. The CMA has taken these submissions into account, but considers that any potential out-of-market constraint from curtains and/or shutters would be limited. The CMA also notes that in [Hunter Douglas/Hillarys](#) the CMA did not consider curtains and/or shutters to be an effective out-of-market constraint. Further, the CMA did not receive any evidence from third parties in this case to indicate that curtains and/or shutters exercised an effective out-of-market constraint on M2M blinds.

- *Ready-made blinds*

209. The CMA notes that in *Hunter Douglas/Hillarys*, it found some limited evidence of out of market constraints from customers purchasing ready-made blinds and cutting these down to size.¹⁷⁵ However, in this investigation, the CMA has not found evidence of ready-made blinds exercising a significant competitive constraint on online M2M blinds, ie sufficient to offset the loss of competition from the Transactions.
210. Hunter Douglas submitted that evidence of substitutability between ready-made and M2M blinds (see paragraph 112) also supported the argument that it was an effective out-of-market constraint on the online M2M blinds. The CMA considers that such evidence does not support the position that ready-made blinds are a significant out-of-market constraint. For instance, as noted above at paragraph 117(a), the CMA considers evidence of the growth of M2M blinds demonstrates a migration of ready-made customers to online M2M and not necessarily the reverse. Indeed, as identified at paragraph 116, only a minority of blinds retailers selling both categories considered that consumers would switch from M2M blinds to ready-made blinds in response to a SSNIP.
211. Furthermore, the price comparisons submitted by Hunter Douglas indicate that online M2M blind prices are substantially higher than ready-made for two out of three categories (ie roller blinds and roman blinds albeit not Venetian).¹⁷⁶ The price comparisons submitted by Hunter Douglas showed material variations between retailers, but also suggested Next's M2M prices were substantially higher than its ready-made prices.¹⁷⁷
212. The CMA therefore concludes that it may be possible that certain types of ready-made blind may exercise some constraint on online M2M blinds, but that the overall extent of any constraint is only very limited.

- *In-store and in-home retailers*

213. The CMA notes that to the extent in-store and in-home retailers are active in the online retail supply of M2M blinds then these sales are taken into account in the market positions of these companies as set out above. In particular, the

¹⁷⁵ *Hunter Douglas/Hillarys*, paragraph 154, which found that that the supply online of M2M blinds may be constrained by the supply online of readymade blinds, with the consumers sometimes willing to cut down a readymade blind rather than buy a M2M blind online.

¹⁷⁶ Based on a comparison between prices for Blinds2Go, 247 and Interior Goods Direct (online M2M) and Dunelm (ready-made). The comparison showed that all three online M2M retailers had prices of more than double ready-made for roller blinds, and more than triple for roman blinds. For Venetian blinds, the three online M2M retailers had prices between 7% and 32% higher than ready-made.

¹⁷⁷ The comparison for Next's roller blind showed a M2M price 155% higher and the comparison for its roman blind showed a price 27% higher (however the M2M roman blind was plain whereas the ready-made roman blind had a blackout lining and therefore was of higher specification).

CMA has already taken sales of online M2M blinds by multi-channel retailers such as John Lewis and Next into account in the estimated shares of supply set out above.

214. Hunter Douglas submitted that evidence of substitutability between in-store and/or in-home retailers with online retailers (see paragraph 121) also supported the argument that it was an effective out-of-market constraint on the online retail supply of M2M blinds.
215. Again, the CMA considers that such evidence does not support the position that in-store and/or in-home retailers are a significant out-of-market constraint. In particular, the CMA notes that the evidence submitted by Hunter Douglas is not necessarily evidence that customers of M2M blinds may and do actively consider moving from online M2M retailers to in-store or in-home retailers. In any event, the main national suppliers of M2M blinds in-home are Hunter Douglas's subsidiaries (Hillarys and Thomas Sanders), which cannot be considered to constrain the Parties.

Conclusion on out-of-market constraints

216. The CMA considers that the evidence indicates that out of market constraints such as ready-made blinds and in-store sale of M2M blinds channels impose only a very limited competitive constraint on the Parties in the online supply of M2M blinds.

Conclusion on the competitive landscape

217. As noted above, the CMA's competitive assessment is based on the conditions of competition absent the 2013 Transaction (namely that 247 would have continued as an independent market participant from Hunter Douglas), but also takes into account subsequent market developments, in order to consider as fully as possible the level and intensity of the competition without the 2013 and 2019 Transactions.
218. The CMA found that the Parties hold a particularly strong market position in the online retail supply of M2M blinds in the UK. Their combined share of supply is [60-70]%, with an increment of [5-10]% brought about by the Transactions. There is only one other sizeable online retailer of M2M blinds in the UK – Interior Goods Direct – which would nevertheless be more than four times smaller than the Merged Entity post-Transactions.
219. The CMA also found that the Parties are close competitors. Their product and service proposition is very similar and their internal documents show that they monitor each other's pricing. Both Parties appear particularly prominently in

organic and paid-for search results (which is an important source of business for suppliers of online M2M blinds).

220. While the Parties suggested that they face a range of competitors (including other online retailers of M2M blinds, multi-channel retailers and online marketplaces), the available evidence shows that other suppliers offer only a very limited constraint. In particular:
- (a) Other than Interior Goods Direct, other suppliers active in the online retail supply of M2M blinds are small and impose only a limited constraint on the Parties;
 - (b) Multi-channel M2M blinds retailers exert only a very limited constraint on the Parties because they have a small presence in the online channel for M2M blinds and are not an effective alternative for most of the Parties' customers;
 - (c) Marketplace platforms, such as Amazon and eBay, do not impose any meaningful constraint on the Parties in the online retail supply of M2M blinds, given the nature of their offering; and
 - (d) Out of market constraints from ready-made blinds and other sales channels are also very limited.

Effects of the 2013 Transaction

221. The CMA considers that Hunter Douglas's ability to exercise material influence, in itself, may have reduced the competitive constraint that otherwise would have been imposed by 247.
222. The CMA notes, in particular, that Hunter Douglas's veto rights regarding offering products with a profit margin below [X] and approving 247's budget may have deterred 247 from adopting decisions that would have made 247 a closer/stronger competitor to Hunter Douglas in the supply of M2M blinds.ⁱ The 2013 Transaction may therefore have had the effect of substantially lessening competition, even if these veto rights were not actually exercised in practice. The CMA also considers that the information that was disclosed by 247 to Hunter Douglas via monthly management accounts may also have dampened the competition between Blinds2Go and 247 by facilitating some coordination of the commercial policies of two companies.
223. This position is consistent with the views of third parties and evidence of exercising its material influence to reduce competition with adverse effects on consumers (both of which are described further below).

Third party views

224. Some third parties that responded to the CMA's investigation indicated they noticed that 247 had a very close relationship with Hunter Douglas (in the period between the 2013 Transaction and the 2019 Transaction) and considered that they might be 'in bed together'. Other third parties also noted that they had observed that 247 had not always been as competitive over the past few years as might otherwise have been expected given its market position.

Internal documents

225. The Parties' internal documents further support the position that Hunter Douglas exercised material influence over 247 during this period. For example:

- (a) An email exchange between Blinds2Go and 247 indicates that, in 2016, the Parties agreed to increase the majority of the prices of their M2M blinds by [0-5]%. While Hunter Douglas submitted that this was the only occasion on which such discussions took place,¹⁷⁸ it nevertheless illustrates how the 2013 Transaction lessened competition between the Parties (and supported their ability to pursue price increases);¹⁷⁹
- (b) An email exchange between [redacted] (247) and [redacted] (Blinds2Go) in July 2016 shows the Parties coordinating on [redacted]. This email shows how Hunter Douglas was seeking to exert the material influence it had over 247 as a result of the 2013 Transaction in order to enhance the online marketing presence of both 247 and Blinds2Go on Google. In the email exchange, Blinds2Go states: [redacted];¹⁸⁰
- (c) An email exchange between [redacted] (247) and [redacted] (Hunter Douglas) in November 2016 regarding marketing opportunities including TV) indicates that Hunter Douglas exercised its material influence over 247 by instructing 247 to [redacted]. In particular, this email highlights that while 247 considered the proposed measures to be important for the growth of its business, Hunter Douglas considered that they would not be commercially beneficial;¹⁸¹ and

¹⁷⁸ Paragraph 8.4, Sixth s109 Notice. However, Hunter Douglas stated that after running further searches of its emails, it found [redacted]. See Annex G8.2, Sixth s109 Notice. The internal document (Annex G8.2) is still an indication that the Parties had the ability to increase prices given [redacted].

¹⁷⁹ Annex G8.1, Email: prices August 2016, Sixth s109 Notice. See also Fourth s109 Notice, page 8.

¹⁸⁰ Annex G8.5, Email: Brand Bidding (July 2016), Fifth s109 Notice.

¹⁸¹ Annex G2.2, Email: TV Advertising November 2016, Fifth s109 Notice.

- (d) An email exchange between [REDACTED] and [REDACTED] (both Hunter Douglas) in July 2016 shows Hunter Douglas considering whether [REDACTED]. The CMA considers that this email suggests that 247 would have been a stronger competitor to Hunter Douglas absent the 2013 Transaction (as it suggests that 247 is, in principle, well-placed in to compete in this market but that Hunter Douglas's interest in both companies has weakened the ability and incentive of 247 to compete against the market leader).¹⁸²

CMA's conclusion on the 2013 Transaction

226. The CMA therefore considers that the 2013 Transaction resulted in a realistic prospect of a SLC as a result of horizontal unilateral effects in the online retail supply of M2M blinds in the UK. Hunter Douglas may have exercised (and in any case has actually exercised) its material influence to substantially lessen competition between the Parties, in particular because:
- (a) the Parties are two of only three main suppliers of online M2M blinds in the UK;
 - (b) the Parties would have been close (and fully independent) competitors absent the 2013 Transaction; and
 - (c) after the 2013 Transaction, the Parties were insufficiently constrained by other M2M blinds retailers or by other out-of-market constraints.

Effects of the 2019 Transaction

227. For the reasons set out above, the CMA considers that Hunter Douglas may have had the ability to materially influence the commercial policy of 247 before the 2019 Transaction. For the reasons set out below, the CMA also considers that the acquisition of a controlling interest significantly increased the control that Hunter Douglas is able to exercise over 247 and therefore that the 2019 Transaction increases the competition concerns described above (by further lessening the constraint that 247 exercises on Hunter Douglas).
228. The 2019 Transaction changed the organisational structure of Hunter Douglas and 247, consolidating the Parties into a single group.
229. Before the 2019 Transaction, each Founding Shareholder was in a position to exert a level of commercial constraint on the 247 business as a result of their shareholding and veto rights (discussed further in paragraph 22). Therefore, each of the Founding Shareholders might seek to resist any strategy

¹⁸² Annex F1.4, Email: Raise (15 July 2015), Fifth s109 Notice: [REDACTED]

concerning the 247's business which was not beneficial to the 247's business or their own interest as shareholders.¹⁸³

230. The 2019 Transaction removed any constraint exercised by the Founding Shareholders on Hunter Douglas¹⁸⁴ in relation to the decisions relevant to the behaviour of 247's business in the market and, therefore, eliminated any ability that 247 might have to compete with Hunter Douglas to any extent.
231. Furthermore, the CMA considers that Hunter Douglas's incentives to increase prices/reduce quality will increase further as it will get all the profits resulting from 247's business.

CMA's conclusion on the 2019 Transaction

232. For the above reasons the CMA considers that the 2019 Transaction has resulted or may be expected to result in a realistic prospect of an SLC as a result of horizontal unilateral effects in the online retail supply of M2M blinds in the UK.

Barriers to entry and expansion

233. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁸⁵

Hunter Douglas's views

234. Hunter Douglas submitted that there are very low barriers to entry and expansion, as evidenced by the sheer number of often small competitors, as well as recent examples of market entry, such as Next. Hunter Douglas submitted that there are a number of reasons for such low barriers, in particular:
- (a) Outsourcing of manufacturing;
 - (b) Wholesale supply option;
 - (c) Variable marketing costs;

¹⁸³ For instance, the email in Annex G2.2 [X], Fifth s109 Notice, shows how the interests of Hunter Douglas and the Founding Shareholders were not always aligned.

¹⁸⁴ For example, as mentioned in paragraph 225(b) above, Hunter Douglas was not able to change the 247 branding such that it was a different colour from the branding of Blinds2Go.

¹⁸⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

(d) Limited website development costs; and

(e) No store network required.

235. Hunter Douglas submitted that the growth of Blinds2Go since 2000 is evidence of such low barriers to entry and expansion. It also submitted that Blinds2Go's growth resulted from a targeted approach involving organic and free engine search results, which could also be pursued by any of the existing range of smaller suppliers currently generating revenues of around £1-3 million. Such an approach would include lower search costs by choosing to bid within a particular locality or targeting bids across a limited time frame.
236. Hunter Douglas also submitted that only limited upfront marketing spend would be required to pursue such a strategy, as illustrated by 247 and B2G's total revenues and PPC advertising spend from 2014 to 2019.¹⁸⁶ In this context, Hunter Douglas submitted that 247's expenditure on PPC has gone from [redacted] in 2014 ([10-20]% of revenues) to [redacted] ([10-20]% of revenues) in 2019, while its sales increased by [redacted]. Hunter Douglas further submitted that Blinds2Go's spend as a proportion of revenues has been similar to that of 247.¹⁸⁷
237. Hunter Douglas made additional submissions in relation to certain specific companies that it considers are expected to enter or expand within the supply of online M2M blinds. For instance, it submitted that Nien Made (through Venata) and AliExpress would enter the UK.¹⁸⁸ ii It also stated that the existence of one multi-channel retailer planning to expand its offering and one in-store retailer planning to enter the supply online of M2M blinds also broadly supports that position that barriers to entry and expansion are low (particularly when taking account of the scale, resources and brand recognition of multi-channel retailers, and very limited capital investment required to enter or expand online). Overall, Hunter Douglas submitted that this entry and expansion would outweigh any reduction of competition resulting from the Transactions.
238. Finally, Hunter Douglas submitted that it expects some of the multi-channel retailers who recently entered, or are expected to enter, the UK online retail M2M blinds market in 2019 to expand their sales significantly.¹⁸⁹

¹⁸⁶ Paragraph 3.55, Response to the IL.

¹⁸⁷ Paragraph 3.56, Response to the IL.

¹⁸⁸ Submission of 6 January 2020, paragraph 5.33.

¹⁸⁹ In particular, Hunter Douglas noted that Next was offering an enhanced product offering of 900 SKUs. Additionally, Next offered in-home measurement, click-and-collect as well as in-store M2M blinds add-ons which would make its offer more attractive to customers. See submission of 6 January 2020, paragraph 5.32 and Response to the IL, paragraphs 3.34 to 3.39.

CMA's assessment

239. The CMA consider that there are factors that can make entry and expansion difficult for some retailers.
240. First, evidence on the Parties' spend on PPC is consistent with the existence of economies of scale in PPC spending, which would result in smaller online retailers having to spend a materially higher proportion of their revenues on PPC to be able to credibly challenge larger online retailers. Data showed that Blinds2Go had achieved much higher growth in revenue than 247, while spending slightly less on PPC as a percentage of revenue.¹⁹⁰ In particular:
- (a) In 2017 and 2018, when 247's ratio of PPC to revenue was [X], its growth in revenue in the following year was half or less than that of Blinds2Go; and
 - (b) In 2016, when 247's ratio of PPC to revenue was [X]% greater than that of Blinds2Go ([X]% versus [X]%), its revenue growth in the following year was better, but nevertheless materially less ([X]%) than that of Blinds2Go.
241. In this regard, the CMA also notes that the three online M2M retailers which entered the online M2M market earlier than their competitors (ie Blinds2Go, 247 and Interior Goods Direct) remained the largest online M2M blinds retailers in 2019, as they were at the time of *Hunter Douglas/Hillarys*, suggesting a degree of advantage for first movers and incumbents. The CMA believes this supported the evidence of third parties, set out below, that entry and expansion were difficult.
242. Similarly, evidence from some third parties indicated that barriers to entry had risen significantly since entry by Blinds2Go and 247. Evidence from several third parties suggested that the current barriers to entry and expansion were significant, particularly in relation to website set-up costs and online advertising spend.
243. Third parties also noted that selling via eBay or Amazon would be less profitable due to the commission rates that these platforms charge (see further paragraph 204). Third parties also suggested that the websites operated by eBay and Amazon have a more limited functionality to list M2M blinds as these products are available in many permutations. These factors would lead to a competitive disadvantage vis-à-vis online retailers with their own website.

¹⁹⁰ Figures 3.12 and 3.13, Response to the IL.

244. The CMA also found internal documents which indicated that Hunter Douglas considers its position in online advertising as a barrier to entry and expansion and noted that increasing its size will increase these barriers ('[X]'). It also suggested that established players have an in-built advantage in maintaining an online presence (which, as noted above, is a particularly important aspect of the business model of suppliers in this sector): 'Google's search algorithms favour established players with a big base of happy customers, and – more importantly - large and well performing sites can outbid smaller players for new customers, as they can leverage their larger base of repeat customers to cover fixed operating expenses'.¹⁹¹ This document shows that achieving a high position in search engines advertising may represent a significant barrier to entry or expansion. It also suggests that Google search can be dominated by the established players, primarily Blinds2Go, 247 and Interior Goods Direct.
245. Overall, evidence from third parties and internal documents implies that smaller in-store players may face challenges in building the necessary supply chain and in making necessary investment in google pay search (see paragraph 240). Evidence from third parties also indicates that well-known high-street retailers consider that M2M products requires material investment in the development of an advanced e-commerce platform (which may not be considered a priority as their focus is on a wider product offering through multiple channels). Moreover, while Hunter Douglas stated that entry by suppliers such as Nien Made (through Venata) and AliExpress would occur, it did not present any evidence to indicate when such entry would occur, how likely it would be, and how it would be sufficient to mitigate the effect of the Transactions. The CMA also received no other evidence indicating that entry by these companies would be timely, likely or sufficient.¹⁹²
246. Finally, the CMA considered the entry and expansion of the multi-channel retailers that Hunter Douglas noted had recently entered the supply of M2M online blinds (or had indicated their intention to enter).
247. The evidence obtained by the CMA indicated that these expansion plans were generally limited (for example being limited to limited product lines) and that projections were not materially different to the sales achieved in 2019, suggesting that the competitive position of these suppliers is unlikely to change materially in the foreseeable future. One of the other multi-channel

¹⁹¹ Annex F.1.1, Acquisition of Blinds2Go Rationale, Fifth s109 Notice.

¹⁹² Hunter Douglas also noted that the world's largest M2M blinds retailer is Home Depot Inc. through www.blinds.com offered international options through links to freight forwarders. However, the CMA received no evidence that suggested they had or would have significant sales in the UK.

retailers further stated that its own plans for expansion remained uncertain and may not be enacted in the foreseeable future.

248. Therefore, the CMA found that entry and expansion in the online retail of M2M blinds in the foreseeable future is not likely to be timely and sufficient to constrain the Parties to such extent that would prevent a realistic prospect of an SLC.
249. The CMA therefore considers that it has not received evidence indicating that entry or expansion will be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Transactions.

Vertical effects in relation to the wholesale supply of M2M blinds to online retailers

250. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitors of the supplier's customers.
251. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.¹⁹³ In the present case, the CMA has considered whether, as a result of each of the ability to exercise material influence in 247 (by virtue of the 2013 Transaction) and the acquisition of a controlling interest (by virtue of the 2019 Transaction), Hunter Douglas could foreclose its downstream competitors in the online retail supply of M2M blinds, either by refusing to supply them with assembled blinds (total input foreclosure) or by supplying assembled blinds on worse terms (partial input foreclosure)
252. The CMA's approach to assessing vertical theories of harm is to analyse: (a) the ability of the merged entity to foreclose competitors; (b) the incentive of it to do so; and (c) the overall effect of the strategy on competition.¹⁹⁴ This is discussed further below.

¹⁹³ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹⁹⁴ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Ability

253. Hunter Douglas submitted that it does not have the ability to foreclose rival retailers. It submitted that it is only one of a large range of wholesalers active in the market for window coverings.¹⁹⁵ Hunter Douglas further stated that blinds in particular can be purchased from a large range of suppliers both within and outside the UK and that the wholesale market for window coverings is therefore characterised by an international supply chain.¹⁹⁶
254. Most third parties considered Hunter Douglas to be an important supplier of assembled blinds and some of these third parties raised concerns about potential input foreclosure by upstream Hunter Douglas companies to retailers downstream.
255. The CMA found that Hunter Douglas supplies assembled M2M blinds both to Blinds2Go and 247, and to several online M2M blinds retailers, including to multi-channel M2M blinds retailers with an online business. However,
- (a) Online retailers, including Blinds2Go and 247 and most of their competitors, buy assembled blinds from other suppliers, including from Decora and overseas suppliers; and
 - (b) The Parties' main online M2M retail competitors either do not buy from Hunter Douglas at all or multi-source from different suppliers and only buy some of their M2M blinds requirements from Hunter Douglas.¹⁹⁷
256. As a result, the CMA estimates that Hunter Douglas's share of wholesale supply of assembled blinds sold by online M2M blinds retailers other than Blinds2Go and 247 is limited.¹⁹⁸
257. Therefore, the CMA considers that the Parties do not have the ability to engage in partial or total input foreclosure as their closest downstream competitors do not buy from Hunter Douglas companies. Furthermore, the CMA believes that the Parties are not able to substantially harm the extent to which the other rivals compete with the Parties as these only buy relatively small proportions of inputs from Hunter Douglas and/or can avoid a price increase by switching away from Hunter Douglas to other suppliers of assembled blinds.

¹⁹⁵ Paragraph 4.12, Response to the IL.

¹⁹⁶ Paragraph 6.1 (v)(b), Response to the IL.

¹⁹⁷ Two of the the Parties' main online M2M retail competitors manufacture most of their assembled blinds themselves.

¹⁹⁸ The CMA estimates that this percentage was about [10-20]% in 2016 and [0-5]% in 2019.

Incentive and effect

258. Having found no ability of the Parties to engage in partial or total input foreclosure, the CMA has not needed to consider incentive or effect.
259. Additionally, the CMA notes that Hunter Douglas is already vertically integrated into online M2M retailing via Blinds2Go, and the impact of the Transactions is only as a result of the increase in its share of online M2M retailing by [5-10]% (as discussed above under horizontal unilateral effects – shares of supply, see Table 1).

Conclusion on vertical effects

260. For the reasons set out above, the CMA considers that the Parties do not have the ability to engage in partial or total input foreclosure in the wholesale supply of M2M blinds to online retailers. Accordingly, the CMA found that the Transactions do not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the wholesale supply of M2M blinds to online retailers.

Third party views

261. The CMA contacted competitors and suppliers of the Parties.
262. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

263. Based on the evidence set out above, the CMA believes that it is or may be the case that each of the Transactions has resulted, or may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the online retail supply of M2M blinds in the UK.

Decision

264. Consequently, the CMA believes that it is or may be the case that (i) two RMS have been created; and (ii) the creation of these RMS has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
265. The CMA therefore believes that it is under a duty to refer each of the Transactions under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under

section 73 of the Act instead of making such a reference.¹⁹⁹ Hunter Douglas has until 27 March 2020²⁰⁰ to offer an undertaking to the CMA.²⁰¹ The CMA will refer both the Transactions for a phase 2 investigation²⁰² if Hunter Douglas does not offer an undertaking by this date; if Hunter Douglas indicates before this date that it does not wish to offer an undertaking; or if the CMA decides²⁰³ by 3 April 2020 that there are no reasonable grounds for believing that it might accept the undertaking offered by Hunter Douglas, or a modified version of it.

266. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 22 March. For the avoidance of doubt, the CMA hereby gives Hunter Douglas notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Hunter Douglas and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Hunter Douglas stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director
Competition and Markets Authority
20 March 2020

Endnotes

ⁱ Paragraph 222 should be read as follows: ‘The CMA notes, in particular, that Hunter Douglas’s veto rights regarding offering products with a gross profit below [x%] [...]’.

ⁱⁱ Paragraph 237 should be read as follows: ‘For instance, it submitted that it expected that Nien Made (through Venata) and AliExpress would enter the UK’.

¹⁹⁹ Section 22(3)(b) of the Act.

²⁰⁰ Section 73A(1) of the Act.

²⁰¹ Section 73(2) of the Act.

²⁰² Sections 22(1) and 34ZA(2) of the Act.

²⁰³ Section 73A(2) of the Act.