

# 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

## Issues Statement

30 April 2020

### The reference

1. On 1 April 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (**the Act**), referred the completed acquisition by Hunter Douglas N.V. (**Hunter Douglas**) of convertible loan notes and certain rights in 247 Home Furnishings Ltd. (**247**) in 2013 (**the 2013 Transaction**), and the completed acquisition by Hunter Douglas N.V. of a controlling interest in 247 Home Furnishings Ltd in 2019 (**the 2019 Transaction**) (together, **the Transactions**) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide, with respect to each of the transactions:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result,<sup>1</sup> in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services (**SLC**).
3. In this statement we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), having had

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<sup>1</sup> In answering this question, the CMA will apply a 'balance of probabilities' threshold. That is, the CMA will decide whether it is more likely than not that an SLC will result from the Transactions. See *Merger Assessment Guidelines* (CC2 (Revised)/OFT1254), September 2010, paragraph 2.23 and *OFT v IBA Health Ltd* [2004] EWCA Civ 142, paragraph 46.

regard to the evidence available to us, including the evidence referred to in the CMA's phase 1 decision (the **Phase 1 Decision**).<sup>2</sup> This does not preclude us from considering any other issues which may be identified during the course of the phase 2 inquiry.

4. We are publishing this issues statement in order to assist any parties submitting evidence to the inquiry. The issues statement sets out the issues we currently envisage will be relevant to the inquiry. We invite parties to let us know if there are any additional issues which they believe we should consider.
5. We are publishing this issues statement during the coronavirus (COVID-19) pandemic, which is having significant impacts on consumers and business across the world. The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic. Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Transactions, although we are required to look beyond the short-term and consider what lasting structural impacts the Transactions might have on the markets at issue.
6. Throughout this document, where appropriate, Hunter Douglas N.V. and 247 Home Furnishings are referred to as 'the Parties' and together as 'the Merged Entity'.

## **Background**

### ***The Transactions***

7. The 2013 Transaction completed on 30 April 2013 and involved the acquisition by Hunter Douglas of convertible loan notes and certain rights in 247. The rights granted to Hunter Douglas in relation to the loan notes included:
  - (a) 49% of the voting rights and a 49% share of the profits in 247;
  - (b) the right to convert the loan notes at any time to ordinary shares;
  - (c) the right to nominate a non-executive Director to the 247 Board (this right was never exercised);

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<sup>2</sup> [Phase 1 Decision](#), 20 March 2020 (published on 22 April 2020).

- (d) certain veto rights conferring the ability to influence the commercial policy of 247; and
  - (e) the right to receive monthly management accounts and commentary in relation to 247.
8. Having initially acquired 49% of the voting rights in 247 as a result of the 2013 Transaction, Hunter Douglas subsequently reduced its voting rights in 247 to 24.9% on 6 December 2016. Hunter Douglas has explained that this reduction was effected for regulatory reasons and in order to ensure that its interest in 247 remained confidential. Hunter Douglas further reduced its voting rights in 247 to 4.9% on 11 May 2017. Notwithstanding this reduction in voting rights, Hunter Douglas retained the other rights in 247 identified above.
  9. The 2019 Transaction completed on 19 February 2019, and involved the acquisition by Hunter Douglas of 100% of the shares in 247.
  10. The existence and details of the 2013 Transaction and the changes to Hunter Douglas's voting rights in 2016 and 2017 were kept confidential and material facts about them were not made public or disclosed to the CMA until November 2019.

### ***The Parties***

11. 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.<sup>3</sup> In 2019 it had global revenues of \$3.7 billion.<sup>4</sup> Hunter Douglas has indicated that Blinds2Go is its principal subsidiary active in the supply of online-only window coverings to retail customers in the UK. The products supplied by Blinds2Go include made-to-measure (**M2M**) blinds, M2M shutters and curtains (both M2M and ready-made).
12. 247 is a UK-based and an online-only supplier of window coverings including M2M blinds, M2M shutters and curtains (both M2M and ready-made) to retail

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<sup>3</sup> At wholesale level, the CMA understands that 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 uses the following brands at wholesale level in the UK: Sunflex, Luxaflex, and HD Direct. At the retail level, the CMA understands that Hunter Douglas is active in the UK through: Thomas Sanderson Limited, Hillarys Blinds Limited, Blinds2Go Limited, Tuiss LLP and 247 Home Furnishings Limited.

<sup>4</sup> See [Hunter Douglas annual report 2019](#).

customers. 247's total global turnover for the period ending 19 February 2019 was £22.2 million.

### ***Business activities and relevant overlaps***

13. The Parties are both active in the online supply of window coverings. Window coverings comprise a range of different products which can be M2M or ready-made, including blinds, curtains and shutters. Window coverings typically are retailed through the online channel, the in-store channel and/or the in-home channel. Retailers may operate through one or more of these channels (**multi-channel retailers**). The principal area of overlap between the Parties is the online retail supply of M2M blinds.
14. In the online supply channel for M2M blinds, customers supply their measurements to a retailer and select colour, style and materials for the blind. The retailer then sources a fully assembled blind to those specifications and delivers it to the customer. Following delivery, the customer fits the blind themselves by following instructions from the retailer or hires someone to fit the blinds for them.
15. Online advertising and marketing of M2M blinds is an important aspect of sales generation. For online-only M2M blinds retailers, this primarily is achieved through search advertising (on a pay-per-click (PPC) or paid search basis) and search engine optimisation so that an online retailer's website is found in the 'organic' search results.<sup>5</sup> Online M2M blinds retailers may also use social media, emails and, to a more limited extent, TV advertising to generate sales.
16. The Parties also overlap in the online retail supply of: (i) M2M curtains; (ii) ready-made curtains; and (iii) shutters. In addition, Hunter Douglas also is active at the manufacturing and wholesale levels of the supply chain for different types of window coverings, including assembled blinds, raw materials and components for blinds, whereas 247 is only present at the retail level of the supply chain. However, for the reasons discussed in the CMA's Phase 1 Decision, we currently do not intend to further investigate these additional

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<sup>5</sup> 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 are 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 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.)

horizontal overlaps and potential vertical relationships between the Parties unless we receive material new evidence.<sup>6</sup>

## Our intended inquiry

17. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will seek to establish the key characteristics of how the industry operates and the rationale for the Transactions.

## Jurisdiction

18. In the context of a completed transaction, the CMA has a duty under section 22 of the Act to refer completed mergers to a phase 2 investigation if it believes that it is or may be the case that (i) a relevant merger situation (**RMS**) has been created and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC.
19. In the context of a completed merger, an RMS exists where the following conditions are satisfied:<sup>7</sup>
- (a) two or more enterprises have ceased to be distinct; and
  - (b) either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
20. The Phase 1 Decision concluded that two RMSs 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

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<sup>6</sup> [Phase 1 Decision](#), March 2020, paragraphs 145-220.

<sup>7</sup> Section 23 of the Act.

supply test is met; and (iii) the statutory period for a decision on reference, as extended, had not yet expired.

21. We will consider the question of whether the CMA has jurisdiction to investigate the 2013 Transaction and the 2019 Transaction in our inquiry.

## **Market definition**

22. 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 CMA's analysis of the competitive effects of a merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>8</sup>
23. In the Phase 1 Decision, the CMA considered the impact of the Transactions in relation to a frame of reference for the online retail supply of M2M blinds in the UK.<sup>9</sup> The Phase 1 Decision also considered whether to expand this frame of reference to include: (i) curtains and shutters; (ii) ready-made products; or (iii) other sales channels (e.g. in-store and in-home). However, the CMA ultimately concluded that there was insufficient evidence to merit widening the relevant frame of reference.
24. We will use the frame of reference discussed in the Phase 1 Decision as a starting point for our analysis and will consider any new evidence we receive which is relevant to the appropriate market definition including any competitive constraints from other products and channels, where relevant.

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<sup>8</sup> [Merger Assessment Guidelines](#) (CC2 (Revised)/OFT1254), September 2010, paragraph 5.2.2.

<sup>9</sup> The CMA also considered a frame of reference for the wholesale supply of M2M blinds to online retailers in the UK as part of its assessment of the potential vertical effects of the Merger in its Phase 1 Decision. However, as noted above, the CMA currently does not intend to investigate this aspect of the Merger during its inquiry and so this frame of reference and related theory of harm is not discussed any further in this Issues Statement.

## Assessment of competitive effects of the Transactions

### *Counterfactual*

25. The application of the SLC test involves a comparison of the prospects for competition with the relevant Transaction against the competitive situation absent that Transaction. The latter is called the 'counterfactual'.<sup>10</sup>
26. The Phase 1 Decision identified two separate counterfactuals to each Transaction, owing to the fact that it identified two separate RMSs. In particular:
  - (a) In relation to the 2013 Transaction, the Phase 1 Decision found that, in circumstances where it is some time since a merger took place, the relevant counterfactual should reflect the conditions of competition absent that merger, including events which occurred in the market in the interim period (provided they were not clearly merger-specific). Accordingly, the CMA's Phase 1 Decision concluded 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.
  - (b) In relation to the 2019 Transaction, the Phase 1 Decision found that the 2019 Transaction increased Hunter Douglas' ability to control the commercial strategy of 247 and that, prior to the 2019 Transaction, 247 was capable of exercising some degree of competitive constraint on Hunter Douglas. Accordingly, the CMA considered the appropriate counterfactual for the 2019 Transaction is that 247 would have continued to exercise the degree of competitive constraint it had done absent the 2019 Transaction.
27. We currently intend to adopt the approach in this inquiry of identifying a separate counterfactual for each RMS. In making our assessment we shall consider possible alternative scenarios to each Transaction and decide upon the appropriate counterfactual situation based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.

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<sup>10</sup> [Merger Assessment Guidelines](#) (CC2 (Revised)/OFT1254), September 2010, paragraph 4.3.1.

## ***Theory of Harm***

28. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm provides the framework for our analysis of the competitive effects of a merger. Identifying a theory of harm in this issues statement does not preclude an SLC being identified on another basis following further work in the course of this inquiry, or the receipt of additional evidence. We welcome views on the theory of harm set out below.
29. At this stage, we are assessing a horizontal unilateral effects theory of harm with respect to each Transaction in relation to the online retail supply of M2M blinds in the UK. The concern under a horizontal unilateral effects theory of harm is that the removal of one business as a competitor could allow the remaining suppliers, including the Merged Entity, to increase prices, lower quality, reduce the volume or range of their services and/or reduce innovation, all relative to the counterfactual. We will explore whether the effect of the Transactions is to reduce the competitive constraints on Hunter Douglas post-merger in the retail of M2M online blinds.
30. The Phase 1 Decision found that the 2013 Transaction resulted 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. Additionally, the CMA concluded that the 2019 Transaction strengthened these competition concerns.
31. We will use the data and information collected in phase 1 and seek to expand and augment this evidence-set as appropriate, to assess the theory of harm set out in paragraph 29. We expect to examine:
  - (a) what factors customers consider when choosing between suppliers;
  - (b) the nature of competition for online traffic, in particular with regard to Google search (both paid search and organic search);
  - (c) the closeness of competition between the Parties, assessing the Parties’ offering, service proposition and online presence, and evidence from internal documents as well as third party views;
  - (d) the market structure, including the market shares of suppliers;
  - (e) the competitive constraint on the Merged Entity from online competitors, marketplace platforms and from multi-channel retailers entering online, including an assessment of their respective offerings, service proposition and online presence; and



- (f) the extent to which suppliers of other products and suppliers active through other channels compete with the Parties.

### **Countervailing factors**

32. We will also consider evidence on entry and/or expansion by third parties, including any evidence on barriers to entry/expansion, and whether such entry or expansion would be timely, likely, and sufficient to prevent any SLC from arising as a result of the Transactions.<sup>11</sup> We will also examine any submissions that may be made in relation to efficiencies arising from the Transactions.<sup>12</sup>

### **Positive remedies and relevant customer benefits**

33. Should we conclude that the 2013 Transaction and/or the 2019 Transaction is expected to result in an SLC, we shall consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
34. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the relevant Transaction and, if so, what these benefits are likely to be and which customers would benefit.

### **Responses to the Issues Statement**

35. Any party wishing to respond to this issues statement should do so in writing by no later than **5pm on 15 May 2020**. Please email: [HunterDouglas.247HomeFurnishings@cma.gov.uk](mailto:HunterDouglas.247HomeFurnishings@cma.gov.uk).

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<sup>11</sup> *Merger Assessment Guidelines* (CC2 (Revised)/OFT1254), September 2010, paragraph 5.8.3.

<sup>12</sup> *Merger Assessment Guidelines* (CC2 (Revised)/OFT1254), September 2010, section 5.7.